Implementing Bill C-61 The Young Offenders Act

An Ontario Consultation Paper

November 1981

Inter-ministry Implementation Project
Ministries of Attorney General
Community and Social Services
Education
Health
Solicitor General

Ontario

Ontario

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THE YOUNG OFFENDERS ACT
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As stated in the Introduction, this paper is being widely distributed to those responsible for, and concerned about, juvenile justice in Ontario. It is hoped that those who know firsthand the needs of children and young persons will respond with their comments and recommendations about the policy issues and pending administration of the anticipated new Act.

The date given for reply is March 1, 1982. This is dictated by the possibility of Bill C-61 being passed early in 1982 and the need for the Province to make decisions early in the Spring. The exact timing is uncertain, however, and while it is hoped that most responses will be received by that date, others will be welcomed where this is not possible.

A French translation is in preparation and will be available shortly.

Inter-ministry Project on the
Young Offenders Act Implementation

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I. INTRODUCTION

On February 16, 1981, Bill C-61, the Young Offenders Act was introduced in Parliament to replace the present 73 year old Juvenile Delinquents Act. At the time of preparing this consultation paper Bill C-61 has passed second reading in the House of Commons. The Bill has been referred to Parliament's Standing Committee on Justice and Legal Affairs where it will be reviewed in detail and possibly changed. The Bill may be passed by April 1, 1982, and with a year for implementation before proclamation it is assumed that the Young Offenders Act could be in effect about April 1, 1983.

The Bill will make some significant changes from the present Juvenile Delinquents Act. As a result, changes in provincial legislation, and a number of changes in policies and procedures, will be required. Ontario has a number of concerns about the Bill in its present form and these have been communicated to the Solicitor General of Canada. However, although hopefully there will be changes in the Bill before it is passed, it is necessary that planning for implementation be started now if Ontario is to be ready when the new Act comes into effect.

The Bill also has significant cost implications for the province. Ontario's support for new legislation has therefore been based on the understanding that suitable Federal cost-sharing arrangements will be negotiated.

To co-ordinate the planning for implementation an inter-ministerial project has been established which includes the Ministries of the Attorney General, Community and Social Services, the Solicitor General, and the Secretariats for Justice and Social Development, as well as participation by the Ministries of Correctional Services, Education, Health, Treasury, and Intergovernmental Affairs. Co-ordination is being provided by the Ministry of Community and Social Services.

Major elements of the pre-implementation process include the preparation of an Ontario response commenting on the Bill; an analysis of the cost implications for the province leading to negotiation of cost-sharing agreements with the federal government; and the development of provincial policy and necessary provincial legislation. Also, before the proclamation of the Young Offenders Act, programs of training and staff development will be conducted, operating manuals and guidelines revised, and information about the new procedures made available to the public.

This consultation paper does not deal with all of the provisions of the new proposed Young Offenders Act. It does concentrate on those that raise issues for provincial administration of the new Act, and the policies that will be required for ages and offences that will no longer be covered by the federal Act.

Where possible the paper indicates how the province anticipates implementing the change. Where the changes are more complex and it is not possible at the present time to state a provincial preference, the paper indicates alternative approaches that could be considered.

This consultation paper was produced by an inter-ministerial task group in order that all who are responsible for, or concerned about, juvenile justice in Ontario will know the province's present thinking about how the Act could be implemented. As the province works towards determining how it will function under the new Act it is important to receive comments from those who know firsthand the needs of children and young persons.

Responding to this Paper

Your comments and observations on this consultation paper are invited and should be directed to:

The Inter-Ministry Project on
Young Offenders Act Implementation
c/o Children's Policy Development
Ministry of Community and Social Services
3rd Floor, Hepburn Block
Queen's Park
Toronto, Ontario
M7A 1E9

When responding please be sure to provide information identifying the individual or organization on whose behalf the comments are submitted, and the name, address and telephone number of a contact person.

Please respond by March 1, 1982.

II. ADMINISTRATION OF THE YOUNG OFFENDERS ACT

This section of the paper deals with issues relating to the provincial administration of the new Act. In this regard, it is important to keep in mind the essential differences between the present and proposed legislation.

At present, young persons in trouble with the law are dealt with under the Juvenile Delinquents Act. Under this Act the State assumes the role of a protective parent and treats the juvenile "not as a criminal but as a misdirected and misguided child" (s.38) requiring "help and guidance and proper supervision". (s.3)

However, Canadian society has changed and so have attitudes towards young people, crime and how to deal with young offenders. For many years the issue of replacing the Juvenile Delinquents Act has been the subject of numerous reports and legislative proposals. Bill C-61 codifies the common law that has developed under the Juvenile Delinquents Act, and also reflects much that is now practice in the juvenile system in Ontario.

As stated in a "Highlights"* booklet distributed by the federal government the Bill blends three principles: that young people should be held more responsible for their behaviour but not wholly accountable since they are not yet fully mature; that society has a right to protection; that young people have the same rights to due process of law and fair and equal treatment as adults, and these rights must be guaranteed by special safeguards. (p.4)

* See Appendix B

1. Maximum Age

The Bill sets the maximum age for proceeding under the Young Offenders Act at under 18 but provides for a province to request a maximum age of either 17 or 16. (s.2) While the federal government would prefer a uniform maximum age, it recognizes that there is no consensus by the provinces due to the variety of services, local conditions and attitudes. (Maximum age refers to age at the time of commission of the offence but the period of disposition could continue after the maximum age.)

At present, the maximum age in Ontario is 16 years of age. Ontario's position throughout the federal-provincial consultation process has been that the present age of 16 should be retained and that there is not a need for a uniform age across Canada. However, if the maximum age is to be uniform, Ontario's position is that it should be 16 years of age.

It is generally perceived that young persons reach maturity at an earlier age today than in the past. As a consequence it would not seem logical to increase Ontario's maximum age beyond 16 years. In Ontario young persons at age 16 are entitled to own a gun, to operate a motor vehicle and if not living at home to receive social assistance in their own right. These are significant rights and the abuse of any of them can have a major impact on the individual young person and on society.

Many 16 and 17-year-olds commit serious crimes. A general sense of responsibility will not be promoted by making such young people fall within a concept of reduced responsibility.

All else being equal, retention of age 16 would mean that major changes in the structure of services, and accompanying costs, would not be required. A higher age would mean a wider age spread and a need for a two-tier youth service system, especially for detention and custody facilities.

2. Youth Court

The present "juvenile court" of the Juvenile Delinquents Act will be replaced under the Bill by the "youth court" which is a court established or designated by the province for the purposes of the Young Offenders Act. (s.2(1))

At present, the provincial court (family division) and the Unified Family Court (Hamilton-Wentworth) are designated as the "juvenile court" for the purposes of the Juvenile Delinquents Act. As the structures, personnel and services available in the family court system would also meet the requirements of the proposed Young Offenders Act it would be the intention that the family court would be designated as the youth court.

3. Provincial Director

The Bill provides for the designation of a "person, group, class of persons or body", by provincial statute or order-in-council, to perform the duties of the "provincial director" under the Bill. (s.2(1))

The duties of the provincial director would be the following:

- direction for the preparation of pre-disposition reports (s.14)
- placement arrangements for young persons on probation (s.23)
- custody arrangements i.e. placement, transfer to other facility or adult facility (s.24)
- notification to prosecutor as to availability of intermittent custody (s.24)
- initiation of reviews of dispositions (s.28)
- preparation of progress reports for dispositional reviews (s.28)
- applying to the court to place young persons in custody on probation (s. 29)
- authorization of temporary release from custody (s.35)
- assignment and supervision of youth workers (s. 37)

What person, group, class of persons, or body should be designated as the provincial director for purposes of the Young Offenders Act?

It is anticipated that provincial legislation would formally designate the Minister of Community and Social Services as provincial director. Then, consistent with the Ministry's organizational structure and current practice under provincial statutes, the Minister would delegate duties and functions of the provincial director through regional directors to the area managers. The Area Manager is in a position of management authority with the most knowledge about the availability of facilities and services, the front-line staff and the needs of young persons. Some of the duties could be delegated to probation and aftercare officers. The role of local children's services committees will also be examined.

4. Youth Workers

The Bill provides for certain duties and functions to be carried out by "youth workers." These are persons appointed or designated, whether by the title of youth worker, probation officer or any other title, by provincial statute or order-in-council to perform any of the following:

- o supervising young persons on probation
- o providing assistance to young persons found guilty of an offence
- o attending court when necessary
- o preparing pre-disposition and progress reports
- o performing other duties and functions as required by the provincial director (s.37)

At present probation and aftercare officers perform a similar role under the Juvenile Delinquents Act and the provincial Children's Probation Act.

Who will function as "youth workers" for purposes of the Young Offenders Act?

As probation and aftercare officers now perform the duties and functions specified for youth workers under the Bill, it is anticipated that probation officers will be designated as the youth workers referred to in the Bill.

5. Legal Representation

Bill C-61 provides that a young person has a right to legal advice and representation at any stage of the proceedings. (s. 11(1)). Statements of this right are repeated in numerous other sections and subsections of the Bill.

Ontario has expressed concern that the federal government is over-legislating in an area where Ontario has achieved a level of legal representation for young persons comparable with legal representation for adults. The young person's right to legal representation can be maintained without introducing undue rigidity that would hamper the administration of justice.

At present there is no prohibition against the young person having legal representation in delinquency proceedings under the Juvenile Delinquents Act. Under the Canadian Bill of Rights which applies to the Juvenile Delinquents Act, and would also apply to the Young Offenders Act, legislation must not be construed or applied to "deprive a person who has been arrested or detained...of the right to retain and instruct counsel without delay". Accordingly a young person may have a lawyer retained privately or he may obtain a lawyer with the assistance of Legal Aid. In granting legal aid the Legal Aid Director will take into account the seriousness of the charge and the financial resources of the young person.

Problems do arise occasionally when the parents are deemed to have sufficient resources to retain counsel for the child but refuse to hire counsel because of their strong disapproval of their child's conduct. However, in such cases Legal Aid Area Directors can reconsider the case with a view to ensuring that a Legal Aid certificate is granted for serious charges, and that Legal Aid duty counsel is available for less serious charges.

If a juvenile does not apply for Legal Aid, or is found ineligible, Legal Aid duty counsel are present at the court to offer advice and assistance when a young person appears at court. However, duty counsel are not usually available to conduct complete trials of contested cases.

How will a young person who wishes legal representation under Bill C-61 be ensured legal counsel?

Bill C-61 states that where the young person is unable to obtain counsel the court shall direct the young person to the Legal Aid program in the province, and where the young person is unable to obtain counsel through provincial Legal Aid or a legal assistance program, the young person may ask the court to appoint counsel to represent him. The court then has a duty to appoint a lawyer (s. 11(4)). Therefore, if Bill C-61 is enacted without amendments proposed by Ontario, the court could directly appoint counsel for the young person where legal aid or a legal assistance program is not available.

Ontario's policy, as reflected in section 20 of The Child Welfare Act, is that courts should not be required to become involved in selecting a lawyer for a child. It is Ontario's position that while the judge may direct that a young person be represented, the Act should not provide for specific appointment. The provision in the Bill for the mandatory directive by the judge should be limited to indictable offences. Therefore, in order to limit the cases in which the court would directly appoint a lawyer for a young person it would be necessary to review alternative methods by wich a young person's right to counsel under the new Act could be met.

The practical problems of ensuring a young person's right to counsel, whether in criminal, child welfare or custody proceedings, are by no means easy to resolve. Indeed, such problems are the subject of much current discussion and debate. Unfortunately, no clear consensus has emerged about the most effective way to ensure appropriate legal representation for young persons in delinquency proceedings. Some of the questions that must be addressed include: Will the Bill affect the role of the lawyer? What should be the primary method of delivering legal services to young offenders? For example, would modifications to the present system of Legal Aid certificates and legal aid duty counsel be required? Would special training be needed to provide legal representation under the Young Offenders Act? How should the cost of legal representation be borne?

These are only a few of the questions that are raised by the Bill in relation to legal representation, and a great many factors will have to be taken into consideration in developing workable options. In the meantime, discussions will have to continue with the Ontario Legal Aid Plan, the Law Society of Upper Canada, the Criminal Lawyer's Association, Criminal Law Subsection of the Ontario Branch of the Canadian Bar Association, federal officials working on implementation of the Young Offenders Act, and others, to define more clearly the issues and options that require consideration.

What about legal representation in the case of offences under provincial jurisdiction?

At present, legal representation for persons 7-11 years of age charged with a federal offence, or 7-15 years of age charged with a provincial offence, is provided as part of the legal representation under the Juvenile Delinquents Act. As these areas will no longer be covered by the new Act, consideration will also have to be given by the province to the level of legal representation to be provided in these cases.

6. Alternative Measures

The proposed Young Offenders Act supports the development of what are called "alternative measures". This support can be found in the initial declaration of principle (s.3) and in the section of the Act which sets out prerequisites when alternative measures are used (s.4). This reflects a trend over the past decade towards the development of formal programs, usually called diversion programs, aimed at reducing the number of children who "penetrate" the juvenile system. Bill C-61 would legislate certain basic protections and safeguards when a young person becomes involved in any such program.

Support for alternative measures tends generally to be based upon the belief that certain behavior ought not to be the subject of criminal proceedings but rather dealt with by specially designed community programs. A concern for the "labelling effect" on children of the criminal justice process and for the inconsistent exercise of discretion at various levels of the juvenile system has contributed to this belief. There has also been the belief that the court system should be used more as a "last resort" for young people because it may otherwise lose its impact and deterrence value for individuals.

Support for alternative measures also reflects broader philosophical views about young people. One view is that many or most youthful offenders are children in need of help and assistance. Another view is that much of a young person's behavior, now labelled as deviant, is part of growing up and should be either tolerated or best responded to either in non-criminal ways or left to the parents.

Over the past five years in particular, a number of programs which fit within the definition of "alternative measures" have developed across Canada, including Ontario. Some provinces, such as Quebec, have made major changes to divert delinquency matters to the child welfare system. In Ontario, a number of individual projects have been undertaken and there has been some research into their effectiveness.

How should the province respond to provisions in the Young Offenders Act governing alternative measures?

Because of some very basic concerns about formal alternative measures, provincial support should be quite limited until more is known about the implications and effects of the programs.

The literature and experience on these measures, even though primarily developed from United States' experience, suggests that, at best, the jury is still out on whether such programs are able to meet the goals set for them. Without attempting to review that literature and experience in detail, the following are some of the concerns which flow from it:

- Even though some projects have successfully made help available to juveniles and their parents, many projects in the United States have tended to "widen the net", instead of narrowing it. Contact between the juvenile justice system and the juvenile who would otherwise have been informally screened has been increased.

- There is concern that many programs have lacked basic procedural and civil rights protections which should be available at all stages of the criminal process.

- There is great concern that diversion programs can become hidden courts which sit behind closed doors and make crucial decisions without the kind of public and accountable discretion exercised in open court by judges, Crown attorneys and defence counsel.

- Diversion programs may mean that resources intended for dispositions are used for juveniles who are less needy, with the result that programs for those clearly found to be offenders in need of court intervention are less available.

- Programs are often no less labelling in their effect, particularly if they use a decision-making process which resembles a court.

- There is as yet no substantial evidence that such programs produce marked reduction in the level of recidivism, although this is not the only measure of success.

Many of those involved in the establishment of diversion programs across Ontario state that they have recognized the problems which have developed in other jurisdictions and have taken steps to insure that they do not occur here. This is an important point because it would be wrong to reject Ontario's efforts solely because of experience elsewhere just as it would be wrong to ignore that experience. To this point, insufficient research has been done either to verify or deny the assertions of those connected with Ontario projects; such research as has been done is either insufficient or inconclusive. The Ministry of Community and Social Services will be reviewing these projects in more detail as part of the efforts to develop an appropriate policy on alternative measures.

The use of alternative measures under the Bill may be affected by the fact that the new legislation will deal only with offences under federal legislation and will raise the minimum age of criminal responsibility to 12 years. Many of the diversion programs that have been developed focus upon offences which may not come before the youth court when the new Act has passed. Also, younger children (under 12 years) have been considered prime prospects for alternative measures.

As a matter of principle and government policy, the concept of formal diversion programs has not been accepted in Ontario for the adult criminal justice system. A major reason for this has been the concern for basic principles, including due process and the protections provided by the justice system. Within juvenile corrections, because of the relatively informal approach of the Juvenile Delinquents Act and an emphasis on prevention, demonstration projects were approved. With the greater emphasis on due process and protections in the proposed Young Offenders Act there will be more similarity in philosophy and approach for both adults and young persons.

In summary, a general endorsement of alternative measures would not be warranted at the present time until much more is known. Therefore, since administration of this section of the proposed Act will be up to the Province to determine how to proceed, Ontario would not engage in major program development.

However, while this would be the general position of the Province, it is intended that the following steps be taken with regard to the special needs of young persons:

1. The effective exercise of discretion by the police is critical. That is the time when perhaps the most important decision of all is made, certainly with regard to the objectives that are envisioned by those who support alternative measures. Formal alternative measures at a later stage in the process may be unnecessary if police discretion is well exercised. Consequently, it is intended that the Ministries of the Attorney General and the Solicitor General, with assistance from the Ministry of Community and Social Services, will develop guidelines for the exercise of police discretion.

2. The Government has stated a strong commitment to those preventive programs which focus upon children who are at risk of becoming youthful offenders. Nothing in this paper should therefore be taken as lessening this commitment to improve the capacity of the other parts of the child-caring system to respond to those children and families who seem to be "at risk" and in need of various types of help or treatment. It should not be necessary for children to be charged with a minor offence as a way of ensuring services.

3. While extensive development of alternative measures is not anticipated, it is important that the results of evaluations and experiences continue to be studied, particularly Ontario and other Canadian experience. To the extent that additional demonstration is considered necessary the emphasis would be on open accountability, basic procedural and civil rights protections and an adequate research component. There should also be a focus upon practical measures, particularly those designed to enable the young offender to undo his or her own wrong, such as through restitution and community service programs.

7. Detention Prior to Disposition

The Bill provides that a young person who is "arrested or detained prior to the making a disposition" may be "detained in a place of temporary detention designated as such by the Lieutenant Governor in Council" (s.7(1)). The young person must as a general rule be detained separately from adult offenders. (s.7(3)). Where a youth court judge is satisfied that the young person and a responsible person agree, the young person may be released in the care of that adult instead of being detained in custody (s.7(4)). The Bill provides that young persons have the same entitlement to bail as adult offenders. A mandatory hearing before the youth court on the need for detention is provided. The youth court will deal with the bail applications for young persons using the rules and criteria that are set out in the Criminal Code (s.8) In a province which has designated a person or group of persons whose authorization is required, in addition to the police, to detain a young person after arrest and prior to a court appearance, a young person may not be detained unless such authorization is obtained (s.7(5)).

The Juvenile Delinquents Act provides that detention must be separate from adult offenders.(s.13) It also provides that bail may be accepted (s.15) but there is no specific provision for a court hearing of the need for detention. There is controversy in Canada over the meaning of these provisions in the Juvenile Delinquents Act. In practice, some courts have determined that the Bail Reform Act does apply, and some have determined that it does not. In any case, in Ontario The Provincial Courts Act provides that in the absence of a court order a young person admitted to an observation and detention home under the Juvenile Delinquents Act must appear before a judge within 24 hours or as soon as is practicable.

The Provincial Courts Act designates observation and detention homes as places of temporary detention. A manual developed by the Ministry of Community and Social Services establishes some basic guidelines for the use of detention: that detention is necessary to protect the child, the community, or to ensure a court appearance; that alternative community placements are not appropriate or available; and that young persons should be placed in the least level of security necessary to detain them having regard to age, past and present patterns of behaviour. Unless the judge specifically orders a secure level of detention the superintendent of the observation and detention home decides on the level of security within the established guidelines.

Under Bill C-61 the superintendent of the observation and detention home is required to bring the young person before a youth court judge, within 24 hours or as soon as is practicable, to determine whether the young person will be detained pending the outcome of proceedings under the Young Offenders Act. Under bail requirements the continuation of detention must be reviewed by the court every eight days.

Secure services legislation is now being developed by Ontario to complement the Young Offenders Act. (See Appendix A) The proposed Secure Services Act will deal with the issue of placement of young persons in secure detention.

How will Ontario's proposed Secure Services Act relate to the detention provisions of the Young Offenders Act?

The Young Offenders Act deals with the making of a detention order but does not make any reference to level of security. Ontario's Secure Service Act will complement the Young Offenders Act in this respect by focussing on the issue of placement of a young person in secure detention.

Under the proposed Secure Services Act if a judge specifies secure detention the young person would be detained at that level. However, admission to secure detention would be restricted to young persons who have been charged with offences for which adults would be liable to five or more years of imprisonment; who have some history either of previous offences or of not appearing for trial; and only after a determination has been made that no less restrictive alternative is feasible. If the judge orders detention but does not specify the level of security under the Secure Services Act the superintendent of the observation and detention home applies the admission criteria referred to above to determine whether the young person will be detained at the secure level. Regardless of who makes the decision, the young person would be given the opportunity to request a review of detention level every eight days.

Should the province consider the designation of a "person or group of persons", in addition to the police, whose authorization is required to detain a young person after arrest and prior to a court hearing?

This provision (s.7 (5)) refers specifically to procedures that are in effect in Quebec. Ontario has not found it necessary to restrict police discretion where detention is required. The secure services legislation together with the Young Offenders Act is expected to provide sufficient safeguards.

8. Insanity

When a charge is laid under the proposed Young Offenders Act there is the possibility that the accused young person may be either unfit to stand trial on account of insanity, or have been insane when the offence was committed. Bill C-61 provides for the application of the insanity provisions of the Criminal Code to young persons unfit to stand trial (s. 13(7) (8)). It is understood that s. 52 (2) is intended to make the Criminal Code provisions on insanity at the time of the offence apply to young persons.

Fitness to Stand Trial

Where there may be some concern as to whether a juvenile charged with a delinquency under the Juvenile Delinquents Act is unfit to stand trial on account of insanity, practice has been to apply the fitness procedures found in the Criminal Code (s.543). These procedures may result in the young person being held in "safe custody" under a Lieutenant Governor's warrant.

Bill C-61 expressly addresses the matter of being unfit to stand trial on account of insanity by providing for remand for observation (s.13(1) (2) (3)), and for an issue to be tried as to whether the young person is fit to stand trial in accordance with the fitness procedures of the Criminal Code (s.13(7) (8)). These provisions are substantially the same as the Criminal Code provisions applied under the Juvenile Delinquents Act. (i.e., the summary conviction procedures incorporating s.543 (and s.545) of the Criminal Code)

Insane at the Time of Commission of the Offence

Very few juveniles are ever dealt with as insane and on that basis committed to a facility like the Mental Health Centre at Penetanguishene. Since the Juvenile Delinquents Act is silent on what should be done in these circumstances there is a tendency for each case to be treated as unique, with arrangements made on the basis of what seems most appropriate to a given situation. What is normally done is that a young person is waived to adult court, found not guilty by reason of insanity and placed under a Lieutenant Governor's Warrant. As an alternative to the criminal process, in some instances the civil commitment proceedings of Ontario's Mental Health Act may be used.

Bill C-61 is apparently intended to change the practice of dealing with a young person who may have been insane when the offence was committed. Until now the summary conviction procedures of the Criminal Code would apply whereby an individual found not guilty by reason of insanity could not be held pursuant to s.545. Although the Bill does not explicitly address this matter, it appears that by virtue of s.52(2) dealing with procedures under the Young Offenders Act, the provisions of the Criminal Code relating to insanity at the time of the offence, (s.542) are applicable. These procedures may result in the young person being held in "safe custody" under a Lieutenant Governor's Warrant.

Adoption of Criminal Code Provisions

The simple adoption of the Criminal Code provisions relating to insanity may raise certain practical difficulties in applying these provisions to young persons. In particular, there is concern that the rules relating to Lieutenant Governor's Warrants were designed for adults and may not be suitable given the particular status of young persons. The Criminal Code provisions are currently under review, but it is expected that the Young Offenders Act will initially operate under the current provisions.

Bill C-61 proposes that s. 13 of the Criminal Code be repealed. Ontario has consistently maintained that the common-law doctrine of doli incapax be preserved for young persons under 14 but 12 years of age or more. This doctrine states that no person shall be convicted of an offence under the age of 14 unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong.

How will the province deal with young persons who are found unfit to stand trial, or not guilty, by reason of insanity?

It is important to note that there are options in the insanity provisions of the Criminal Code other than "safe custody" for dealing with unfit and acquitted insane young persons. An absolute discharge, or a discharge on conditions, such as probation, are alternatives to detention in secure treatment units which may be considered in appropriate circumstances.

Present practice is for these young persons to be detained in hospitals for the adult criminally insane. Although very few are detained there has been some criticism that young persons have to be kept in adult facilities. The Ministry of Community and Social Services has announced that secure treatment units will be established to treat young persons with mental disorders who are considered dangerous to themselves or others. With the consent of the Minister these secure treatment units would also be available for young persons who are found unfit to stand trial, or not guilty by reason of insanity.

An Advisory Review Board may be established under provincial legislation. This board is empowered to make recommendations to the Provincial Cabinet concerning the release of persons held on Lieutenant Governor's Warrants. As it is expected that most young persons would be held in the secure treatment units referred to above, it is anticipated that appropriate review procedures would be provided for under the proposed Secure Services Act. (see Appendix A). The review procedures under the Secure Services Act are much more extensive and offer greater procedural protections than those available under Ontario's Mental Health Act. A young person would have a court review every 90 days while under a Lieutenant Governor's warrant. The court would recommend to the Lieutenant Governor when release of the young person is appropriate.

9. Dispositions

If a young person is found guilty of an offence under the Young Offenders Act the youth court has available a wide range of options including an absolute discharge, a fine of up to $1,000, restitution, compensation, community service, probation, or a committal to custody (s.20(1)). The dispositions are intended to meet the special needs of young persons, to protect society, and where possible, to take into consideration the rights of victims of crime.

In contrast to the Juvenile Delinquents Act under which dispositions are for an indefinite length of time, the Bill provides that a disposition or combination of dispositions for the same offence may not exceed two years.(s.20 (3)) The maximum within that two year period is set by the youth court judge. It should also be noted that in no case would a young person be subject to a greater penalty than the maximum penalty applicable to an adult committing the same offence (s.20(6)). (See page 73)

The Bill also provides that the youth court retains jurisdiction over the young person. This is different from the Juvenile Delinquents Act under which a young person committed to training school, or to the care of a children's aid society, may be dealt with pursuant to provincial legislation (s. 21(1)).

The Bill provides for two categories of dispositions: non-custody and custody.

Dispositions: Non-Custody

Non-custodial dispositions include a maximum fine of $1,000, compensation not exceeding $1,000, restitution, community service, and probation (s.20(1)).

Under the Juvenile Delinquents Act the range of specific non-custodial dispositions is more limited, there being no explicit provision for compensation, restitution or community service work. However, courts are presently making such non-custodial dispositions and probation officers carry responsibility for their enforcement. A more widespread use of such orders will require specific planning for those locations where programs are not now operating.

The Bill provides for the provincial director to delegate responsibility for enforcement of non-custodial dispositions to youth workers (s.37(e)). It is anticipated, as is presently the case, that probation officers would assume responsibility for enforcement and would in turn develop or involve various groups and agencies in non-custodial programs. Fines would continue to be paid directly to the court.

Under the Juvenile Delinquents Act the court may determine where a juvenile may reside as part of the disposition. The court may commit the juvenile to the "care and custody of a probation officer" (s.20(1) (d)) who may arrange placements; cause the child to be placed in a foster home (s.20(1) (f)); or "commit the child to the charge of a children's aid society" (s.20(1) (h)) who may arrange placements.

Under the proposed Young Offenders Act the dispositions will change. A child would no longer be placed in the care of a children's aid society, or directly in a foster or group home. However, the court could order that the young person "reside in such place as the provincial director or his delegate may specify" (s.23(2) (f)). If there is need for intervention by the children's aid society separate action could be taken under The Child Welfare Act.

Dispositions: Custody

The Bill provides that a young person may be committed to custody , for a specific period not exceeding two years (s.20(1) (j)), and be placed in such level or place of custody as the provincial director may specify (s.24(2)). An early release from a custody disposition may be authorized by the youth court as a result of a review or on a recommendation from the provincial director, which would then result in a probation order for the remainder of the time (s.28, s.29). When the youth court receives the provincial director's recommendation, and there is no application for a review, the judge shall place the young person on probation (s. 29(4)). Ontario believes that the judge should have discretion in this regard, or it is simply a "rubber stamp". In the event that probation is not granted the provincial director could then request a review.

A present, whenever a committal to training school is made under the Juvenile Delinquents Act, the young person is dealt with under the provincial Training Schools Act and becomes a ward of the Crown for an unspecified period of time (until age 18 or the wardship is otherwise terminated). Release of the juvenile from the training school is at the discretion of the provincial administation.

Under the Bill a disposition of custody means that the young person will be admitted to a provincially designated place of custody. Place of custody is defined as "a community residential centre, group home, child care institution, training school, detention centre or facility, correctional institution, forest or wilderness camp, or other like place or facility that is designated for the containment or restraint of young persons by the Lieutenant Governor in Council of a province or his delegate" (s.24(1)). Absence from a place of custody, regardless of the degree of security, is restricted to day release to attend school or to obtain or continue employment, and to a temporary absence of up to 15 days for medical, compassionate or humanitarian reasons, or for the purpose of rehabilitation or reintegration into the community (s.35).

What places or facilities should be designated as "places of custody" for the purposes of the Young Offenders Act?

The definition of a place of custody under the Bill is sufficiently broad to allow considerable flexibility in deciding on the places to be designated. However, regardless of the type of facility designated it must have the capacity for "containment and restraint," and the restrictions on access to the community would apply.

It is anticipated that a relatively broad class of facilities and programs would be designated as places of custody and that the facilities would be listed in schedules. This would include the secure care and secure treatment facilities, and also certain restrictive, though less secure, facilities such as some schedule I or II mental retardation facilities, mental health centres, wilderness camps, and group homes with a high ratio of staff to residents. This designation would provide the "containment and restraint" required by the Bill and would also better serve the varying needs of young offenders.

How will Ontario's proposed secure services legislation relate to the custody provisions of the Young Offenders Act?

Under the Bill the provincial director determines the level and specific place of custody after the youth court has made an order of custody. Under Ontario's proposed Secure Services Act (see Appendix A) the provincial director will require the authorization of the youth court in order to place a young person in a secure care setting (training school). The secure services policy is based on the principle that, as the decision to place a young person in secure care is such a serious one, the decision to do so should not be solely an administrative one but should be authorized by the court.

The criteria for secure care include: conviction for a serious offence, that is, one for which an adult would be liable to imprisonment for five years; a recent conviction for a serious offence, or causing or creating the risk of serious bodily harm; and that no less restrictive alternative is feasible.

It is expected that, in practice, the youth court, after making a custody order under the Young Offenders Act, would apply the secure care admission criteria and decide in advance whether or not to authorize the secure level of care. The provincial director would decide on the place of custody, including changes from one place to another subject to the limitation that the young person could not be moved from a non-secure setting to secure care unless the youth court had authorized it. As previously noted there cannot be an early release from a custody disposition without youth court authorization.

Will the province consider the establishment or designation of facilities for "intermittent custody"?

The Bill provides for a disposition of intermittent custody (s.20(i)(j)) such as custody imposed on weekends. However, before such a disposition can be made the youth court must receive a report as to the availability of places of custody in which an order of intermittent custody can be enforced. The court shall not make such an order if there is no such place available (s.24(6)).

The province may therefore choose whether or not to establish or designate facilities for intermittent custody. The advantages of such a disposition are that it is a less disruptive alternative than is continuous custody, and permits a young person to remain at home to continue to attend school or maintain employment, while restraining freedom at other periods, such as weekends. The adult system has found that intermittent custody presents considerable administrative and staffing difficulties. However the potential benefits of intermittent custody for young offenders are recognized and the arrangement is presently being used satisfactorily in one Ontario location. It is intended that facilities could be provided for intermittent custody on an experimental basis.

What should be the legal status of young persons in custody?

Under the Juvenile Delinquents Act the state assumes the role of a protective parent who would treat a young person in trouble with the law "not as a criminal but as a misdirected and misguided child" (s.38) requiring "help and guidance and proper supervision".(s.3) In keeping with this approach, dispositions are open-ended on the grounds that when a juvenile no longer requires help, guidance and supervision the disposition can be terminated. The Juvenile Delinquents Act provides that committals to a children's aid society or training school may be dealt with under provincial law. Ontario's Training School Act currently provides that all juveniles under that Act become Crown wards until age 18 unless wardship is terminated earlier. During this time the Crown assumes the rights and responsibilities of a legal guardian and parental rights with respect to the young person are suspended.

In contrast to the philosophy underlying the Juvenile Delinquents Act, the Bill states that young persons have a "right to the least possible interference with freedom" (s.3(1)(e)) and that "parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when all measures that provide for continuing parental supervision are inappropriate" (s.3(1)(g)). These provisions imply that young persons should only be removed from home as a last resort and that when they are removed parents should remain involved whenever possible. As such it would not be expected that automatic Crown wardship for custody dispositions would continue but that parents would retain their legal rights and responsibilities towards their child during a committal to custody. The situation would be similar to voluntary residential placement where parents place their child for a temporary period of time without giving up their role as guardians of the child. Only those rights and responsibilities necessary to the day-to-day care and programming for the young person would transfer to the Ministry of Community and Social Services. Parents would continue to be responsible for decisions which will affect the young person on a long-term basis such as non-emergency medical decisions and involvement in educational and vocational planning.

10. Inter-Provincial Agreements

The Bill provides that where an appropriate agreement has been made between two provinces, a young person who has been placed on probation or committed to custody in one province may be dealt with under the probation order or held in custody in the other province. (s.26) The Bill does not contain any criteria for deciding when a disposition should be dealt with in another province. Ontario has questioned whether criteria should not be added.

At the present time there are no such inter-provincial service agreements for juvenile delinquents. Informal ad hoc arrangements are made but they lack uniformity and differing circumstances between provinces can create problems for reimbursements.

Existing inter-provincial child welfare agreements, which establish guidelines for costs and conditions for transfer of responsibility for service, will provide a basis for working out inter-provincial agreements for custody and probation. Under the guidelines the best interests of the child can be ensured when a transfer between provinces is made. Comments are invited on what the guidelines should include.

11. Review of Dispositions

The Bill contains a review procedure to make sure that each disposition made by the youth courts is monitored continuously. The review procedure has three main objectives as outlined in the "Highlights": (see Appendix B)

- to keep dispositions relevant and geared to the circumstances and progress of young persons
- to give everyone involved -- the young person, the parents, the provincial director, and the Attorney General -- the opportunity not only to initiate a review but also to attend and be heard
- to protect both the rights of the young person and the interests of society. (p.13)

Under the Juvenile Delinquents Act the judge may have a young person who has been found delinquent brought back to court until age 21. Anytime the young person is brought back he may be given a new disposition, transferred to adult court, or discharged.(s. 20(3)) In practice, the present review system is used primarily in cases where the young person has failed to comply with the court's disposition.

The Bill contains specific provisions for reviews of both custody and non-custody dispositions. (s. 28-32) The Bill distinguishes these reviews from reviews which result from wilful failure or refusal to comply with the disposition, or escape or attempted escape from custody. (s.33) It is Ontario's position that wilful failure to comply with a disposition should be a separate offence rather than a reason for review.

Reviews of Non-Custody Dispositions

The Bill provides for reviews of non-custodial dispositions by the youth court on the application of the young person, his parent, the Attorney General or his agent, or the provincial director, at any time after six months from the date of disposition if the court is satisfied that:

- circumstances have changed materially
- the young person is unable to comply with, or is experiencing serious difficulty in complying with, the terms of the disposition
- the terms of the disposition are adversely affecting the opportunities available to the young person to obtain services, education, or employment
- other grounds which the youth court considers appropriate (s.32(2)).

During a review the youth court may confirm the original disposition; terminate the disposition and discharge the young person from any further obligation; or make any new disposition, other than a committal to custody, which does not increase the length or severity of the disposition being reviewed (s.32(7). There are no choices to be made by the province in implementing this provision.

Reviews of Custody Dispositions

The provincial director, young person, or his parents, or the Attorney General or his agent, may request a review of the custody disposition six months after the custody order or latest review. A review may also be initiated during the first six months of the term of the custody disposition with leave of the judge (s.28(2)). The provincial director or his delegate will be required to initiate a review of the custody disposition at least one year after the disposition is ordered (s.28(1)).

The grounds for the optional reviews are outlined in the Bill as follows:

- the young person has made sufficient progress to justify a change in disposition
- circumstances that led to the committal to custody have changed materially
- new services or programs are available that were not available at the time of disposition
- other grounds which the youth court considers appropriate (s.28(3).

As a result of a review the youth court may confirm the original disposition, or release the young person from custody and place him on probation for a period not exceeding the remainder of the period for which he was committed to custody (s.28(15)).

Under the Juvenile Delinquents Act a young person found delinquent and committed to training school is dealt with pursuant to the provincial Training Schools Act and becomes a ward of the Crown. Under this provincial legislation the Training Schools Advisory Board has been established to review the status of Crown wards in the training school system and to act in an advisory capacity to the Minister.

Under Ontario's proposed secure services legislation (see Appendix A) a Secure Care Review Board will be established. This board will perform an advisory function similar to the Training Schools Advisory Board. The Board will conduct regular reviews of the progress of young persons and will deal with transfers between levels of custody. A young person shall, under certain circumstances, have a hearing before the Board on request. The content of a review under the Secure Services Act will not include reviewing the disposition itself. This is provided for in the Young Offenders Act.

The Young Offenders Act provides that reviews of custody dispositions will be conducted by the youth court, but that at the option of a province a provincially established or designated review board could carry out the review functions of the youth court (s.30). The decision of the review board would be subject to review by the youth court on the application of the young person, his parents, the Attorney General or his agent, or the provincial director (s.31).

Should reviews of custody dispositions in this province be carried out by the youth court or by a review board?

The review process should be established in as simple and readily accessible way as possible. In this regard, youth courts will operate throughout the province and, under the Young Offenders Act, will carry out other reviews, i.e. non-custody dispositions and failure to comply with dispositions. The review process therefore would be simplified by using the existing court system instead of establishing a parallel system to review custody dispositions.

If review boards are used their decisions would be reviewable by the youth court on application. The subsequent judicial review could confirm, alter, or deny the decision of the review board. Therefore the potential of considerable duplication of function exists if a sizeable number of cases reviewed by review boards were to be re-reviewed by the youth court.

Using the youth court for purposes of reviewing custody dispositions would increase the workload of judges and could require the appointment of additional judges. The establishment of review boards could relieve youth courts of this workload.

The review process must ensure due process and the protection of rights. Court procedures would fulfil this function. However, as boards would carry out review functions on behalf of courts, similar protections should presumably be provided by the review boards.

Using the youth court to review custody dispositions has the added benefit of the judge being kept informed of how the service system is operating, and providing the opportunity to assess the effectiveness of their original dispositions.

On balance, reviews of custody dispositions should be conducted by the youth court.

12. Records

In contrast to the Juvenile Delinquents Act which is silent on the matter of records, Bill C-61 contains specific provisions about the creation, maintenance, confidentiality, accessibility and destruction of youth court, police, government, and private records (ss. 40-46). Ontario believes that police and provincial agency records are matters of provincial jurisdiction and do not belong in federal legislation.

The Bill provides that court records shall be kept of every case and that other records may be kept on young persons for the purposes of investigating alleged offences, proceedings under the Act, administering dispositions, and considering whether to use, or as a result of, alternative measures.

The Bill also provides for records to be made available to certain persons on request (s.40(3)). Records may also be made available for research or statistical purposes provided that information so obtained is not disclosed in any form that could be reasonably expected to identify individual young persons (s.40 (7)).

After a qualifying crime-free period (two years for summary conviction offences, and five years for indictable offences) the Bill requires that all records kept pursuant to the Young Offenders Act be destroyed (s.45(1)). Records shall also be destroyed on acquittal, or where charges are withdrawn or where no proceedings are taken for six months (s.45(3)). A young person shall be deemed not to have committed any offence in respect of which records are required to be destroyed (s.45(4)). Ontario questions whether destruction should be automatic, but rather suggests that destruction be on request and subject to review.

The Bill provides that it will be an offence if any person who controls or has possession of a record that is required to be destroyed, fails to destroy the record if requested to do so by, or on behalf of, the young person (s.45(6)). Unauthorized disclosure to persons not listed as being allowed access to records will also constitute an offence (s.46).

While Ontario believes that there should not be provisions governing certain records in the Young Offenders Act, these sections require some specific decisions by the province if they remain in the Act.

Government and Private Records

Under the Bill, a department or agency of government may keep records on young offenders for the purposes of investigating alleged offences, proceeding against a young person, administering a disposition, and considering whether to use, or as a result of, alternative measures (s.43(1)). Private agencies may also keep records of information obtained as a result of the use of alternative measures or for the purpose of administering or participating in a disposition (s.43(2)). In accordance with s.45 these records will be subject to destruction.

How will the Province ensure compliance with these provisions?

The Ministry of Community and Social Services is presently developing comprehensive policies and procedures for children's services records based on the 1979 Consultation Paper on Case Information Disclosure. This development can now take into consideration the anticipated Young Offenders Act provisions in order to answer such questions as: What constitutes a record? What private records are involved in disposition administration? Are there reasonably simple and routine procedures that will ensure destruction of records? Should consideration be given to routine destruction of certain private agency records, or their return to the referring court or ministry office upon completion of a disposition? Should agencies be required to keep separate files for offence-related records to facilitate their control and destruction?

Police Records: Fingerprinting and Photographing

The question of whether the police may fingerprint or photograph young persons suspected, charged or convicted of offences has never been clearly answered in law. The Juvenile Delinquents Act is silent on the issue and recently the courts have delivered conflicting decisions.

In recognition of the need for this information in the detection and investigation of crime, the Bill makes a number of specific provisions for the fingerprinting and photographing of young persons (s.44). The Bill specifies that the use of information be limited primarily for criminal justice purposes and provides a number of protections and safeguards to ensure compliance. The Bill provides for the taking of fingerprints and photographs in cases of indictable offences as is permitted under the Identification of Criminals Act (s.44(1)(2)). The Bill also authorizes the designation of a "person or group of persons" whose authorization is required before the fingerprints or photographs of a young person may be taken by police (s.44(6)).

Should the province consider the designation of a "person or group of persons" whose authorization is required for the taking of fingerprints or photographs by police?

With the detailed protections and safeguards contained in the Bill it is questionable as to what advantage would be derived by requiring police to obtain approval from a provincial authority before the fingerprints or photographs of a young person could be taken. It is anticipated that the option provided will not be used and that the police will continue to exercise their discretion within the provisions of the Act.

III. EXCLUDED AGES AND OFFENCES

1. Under the Bill, the minimum age of criminal responsibility will be raised to 12 years from the present age of 7. This raises the issue of:

   - how to respond to children under 12 whose behavior might previously have resulted in action under the Juvenile Delinquents Act.

2. The Young Offenders Act (Bill C-61) is restricted to offences against the Criminal Code and other federal statutes. Consequently, the province will have to deal with matters which were formerly dealt with under the Juvenile Delinquents Act including:

   - provincial and municipal offences by young persons and children*
   - the provincial offence of truancy
   - the former Juvenile Delinquents Act offence of sexual immorality.

* Bill C-61 defines a "child" as a person under 12 years of age and a "young person" as a person over the age of twelve. This distinction will be used throughout this section.

1. Children Under Twelve Years

The proposed Young Offenders Act will amend the Criminal Code (s.12) to raise the minimum age of criminal responsibility from seven to twelve years, therefore:

> No person shall be convicted of an offence in respect of an act or omission on his part while he was under the age of twelve years.

The raising of the age is to be seen in the context of the distinct shift of philosophy from the Juvenile Delinquents Act to the new Act. The Juvenile Delinquents Act established the state as a kindly parent who would treat the child seven years and older in trouble with the law "not as a criminal but as a misdirected and misguided child" (s.38) requiring "help and guidance and proper supervision" (s.3). Under the new Act, as stated in the section on principles, young people twelve years and older, while they should not in all instances be held accountable in the same manner or suffer the same consequences as adults, should nonetheless "bear responsibility for their contraventions and society must be afforded the necessary protection" (s.3). Children under twelve years, however, in the words of the Young Persons in Conflict with the Law Report, 1975, would be more appropriately looked after "under the provisions of provincial child welfare, youth protection and juvenile correctional legislation".

Available statistics indicate that at present under the Juvenile Delinquents Act some 90% of police contacts with children under twelve years who are suspected of committing an offence are handled by warnings and calling the parents, suggesting help from community agencies, etc.

Statistics Canada reports 1,328 charges of delinquency in Ontario in 1980 brought against 770 children under twelve years of age. This represents about 10% of all police contacts with this age group (and only 10% of all charges under the Juvenile Delinquents Act for that year). Of these charges, 30% were for "break and enter", 30% for "theft under $200", and 13% for "mischief", which together accounted for 72% of all charges. The remainder included charges for assault (34 charges); arson (31); possession of stolen goods (129); theft over $200 (66); and offensive weapons (7). (See V. Statistics, Table 1)

For the 1,328 charges in Ontario in 1980, there was no finding of delinquency in 40% of the cases which were either adjourned indefinitely (sine die), no action was taken, or otherwise adjudicated. (see V Statistics, Table 3). Where the charges resulted in a finding of delinquency (60%), some 39% of the cases were either adjourned indefinitely, suspended, reprimanded or otherwise disposed. Of the remainder, 41% were placed on probation, 15% were referred to the care of the children's aid society and 4% were fined. 1% were sent to juvenile institutions.

Given the increase in the minimum age under Bill C-61, what should be the provincial response to children under twelve years who commit acts that, were they older, would be federal, provincial or municipal offences?

Alternatives can be envisaged that range in varying degrees from an "offence-specific" approach to that of a "child welfare" approach. The option of child welfare proceedings when appropriate would remain, regardless, just as it exists at the present time.

In considering policy alternatives the following principles and objectives are relevant:

- The behavior, or act, which would otherwise be an offence but for age, may be symptomatic of the child's need for help and guidance, which may include more effective supervision, care, treatment or protection.

- Intervention should be as minimal as possible having regard to the anticipated and demonstrated adequacy of the parents to respond, and to the seriousness of the act.

- The least restrictive alternative should be a governing factor having regard to the safety of the child, and to the liklihood of repeated behavior.

- The state's response should be in proportion to the behavior, and the necessity for intervention in the family. Most children, at one time or another and as part of the process of growing up will engage in delinquencies of a minor nature. This behavior requires consequences such as parental discipline, or warnings by police or other persons to teach the child that such behavior is not acceptable. On the other hand, the behavior of some children will be serious enough that intervention by the state is necessary.

- Parents have the responsibility for the discipline of their children, but they may need help and support in that role.

- There must be public confidence in the effectiveness of measures that can be taken.

In addition to policy considerations, the approach taken must fall within the legislative competence of the Province. While legislation aimed directly at the prohibition and punishment of certain conduct could be characterized as criminal law, which is reserved exclusively for the federal Parliament, Ontario is constitutionally empowered to pass legislation aimed at the prevention, control and correction of improper conduct on the part of children. In cases of improper behavior, it is considered possible to authorize remedial action which would achieve a balance between the needs of society, and the best interests of the child for its protection and welfare.

Alternative Approaches to Children Under 12 Years

1. A provincial "Child Offender Act"

It may be desirable to enact special children's and young offenders legislation for Ontario to deal with improper behaviour or misconduct in all areas which are being vacated by the federal legislation. Where a child under 12 years of age engages in conduct which would, if he were an adult, contravene the Criminal Code, other federal statutes, or provincial statutes and municipal by-laws, the child might be brought before the provincial court (family division). It would be determined whether or not the child did engage in such conduct and, if so, a range of dispositions might be provided with the purpose of treating the child not as a criminal but as one requiring help, guidance and proper supervision. Some of the non-custodial dispositions in the federal Young Offenders Act might be appropriate. Some additional dispositions might be provided, considering the young age and reduced responsibility of the child.

This approach would concentrate on the misconduct of the child. If it were found that no misconduct took place, no further action would be taken. There could, of course, be other reasons for initiating proceedings under child welfare legislation, and the child welfare option would always be available as it has been under the Juvenile Delinquents Act.

This approach would permit a continuation of current practices and procedures for dealing with misconduct by children under 12 years in Ontario. In the view of some, the Juvenile Delinquents Act has served that purpose well, and a similar approach might be considered appropriate. On the other hand, others consider it inappropriate to treat such children as offenders and may feel that it would be inconsistent with the federal Bill and the raising of the minimum age.

2. Using Child Welfare Legislation

An alternative approach would be to use child welfare legislation. Under Ontario's Child Welfare Act, the definition of a child in need of protection includes a child who is "found associating with an unfit or improper person", and also "where the person in whose charge the child is, is unable to control the child" (s.19 (1) (b) (v) and (vii)). Where a child is found to be in need of protection, the court shall make one of three orders. The child may be placed with, or returned to, the parents or other person, subject to supervision by the children's aid society. If so, the court may impose reasonable conditions relating to the method of supervision of the child, upon the parents, the society, the child or any other person. Secondly, the child may be made a temporary ward of the society, or thirdly, may be made a ward of the Crown and placed in the care of the society (s.30 (1) and (4)). Residential placements are possible for children who are made temporary or Crown wards.

These provisions are sufficiently general that they could provide the means for intervention when considered necessary. However, while necessary in some instances, wardship would seem to be an excessive intervention for much of the behavior referred to earlier in this section and contrary to the principles and objectives proposed earlier, i.e. proportionality, minimal intervention and the least restrictive alternative.

A review of The Child Welfare Act, and related children's services legislation, has been underway for some time, and changes in the present provisions for protection of children are being considered. Changes could include a greater emphasis on the role of voluntary agreements by parents to use services for support and help in the interests of the child. Children's aid societies now provide such support to families which have children engaging in minor delinquencies. Such agreements could be one alternative. In the relatively small number of cases where parents have been unsuccessful in controlling their child or unwilling to use help voluntarily, the legislation could include provisions for imposing mandatory supervision. A new category of "the child in need of supervision" could provide that, where a child has committed an act that would be an offence if he were twelve years or older, supervision could be imposed together with conditions. Dispositions for this category would not include the more serious interventions for "protection" such as wardship and removal from the home. In addition, for those rare cases where the child under twelve commits a dangerous act (e.g. arson) and requires treatment, it would be possible under the proposed Secure Services Act to admit the child to a locked treatment unit, with the consent of the Minister.

The response of the police to calls under a child welfare approach, need not be different from the way it would be under offence-specific legislation or the way it is now under the Juvenile Delinquents Act. Police would still respond to an occurrence involving an apparent offence and exercise discretion whether or not to take action under the appropriate statute. In the case of a child under 12, and where the statute is child welfare legislation, procedures and guidelines could be developed to ensure that police and children's aid societies are clear on their respective powers and responsibilities and that there is no uncertainty as to expectations.

Based on present experience, formal proceedings would likely be considered necessary in only some 10% of the cases. Under present child welfare provisions the child could be returned home and a referral made to the children's aid society. If necessary, a police officer or children's aid society official could take a child to "a place of safety" and detain him until the matter is brought before the family court. The society would carry out an investigation, with appropriate proceedings following at a later date either based on a need for protection or on a need for supervision.

Where the society does not bring the matter to court, The Child Welfare Act (s.22(2)) provides that the police or any other person could make application to the court that there are grounds to believe that a child is in need of protection or supervision.

There is the question as to whether all action should be initially by referral to the children's aid society, as it is at present, or whether police officers should have the option of initiating proceedings directly. The latter alternative would have the advantage of leaving responsibility for discretion and direct response in the hands of the police, thereby providing a more direct, faster and simpler access to the courts. On the other hand, initial referral to the society would provide for a complete assessment of the child and family and allow the opportunity to make voluntary arrangements for services where appropriate. If this alternative were adopted a direct application to court by the police, or anyone else, could still be possible as described previously. The court could then decide between differing views of the child's needs.

2. Provincial Offences: 12-16

Bill C-61 covers only those young persons twelve years of age or over (s.2(1)), charged with specific offences against the Criminal Code and other federal statutes. (s.2(1) and s.5(1)).

At present offences against Ontario statutes and municipal by-laws committed by young persons under 16 are dealt with under the Juvenile Delinquents Act, as are criminal and other offences. (s3(1)).

When the Young Offenders Act comes into effect it will be necessary to develop a process for dealing with provincial offences committed by young persons between 12 and 16.

The Nature of Provincial Offences and the Provincial Offences Act

Provincial offences in general differ greatly from the large majority of offences under the Criminal Code and other federal laws such as the Narcotic Control Act. Whereas most criminal offences constitute acts which are prohibited absolutely, such as assault or robbery, virtually all provincial offences arise from violations of laws or by-laws which are usually intended merely to regulate various activities which are in themselves lawful. Examples of provincial offences are careless driving, racing on a highway, speeding, driving a motor-assisted bicycle while under 14, operating a bicycle with improper lighting, operating a bicycle without a horn, hitchhiking, consuming liquor while under 19 years of age, and trespassing.

Activities are regulated under provincial law in order to protect the safety and well-being of the community as a whole. Accordingly, the harm caused by conduct which only violates provincial laws is not within the ambit of the criminal law. The penalties to which persons are liable upon conviction are also limited; in the majority of cases a monetary fine is the only possible penalty, and imprisonment, even where allowed, is seldom imposed unless it is clear that there is little liklihood of collecting a fine. Where there is no specific penalty prescribed, there is a general maximum penalty of $2,000, six months imprisonment, or both. However, in most cases specific penalties are prescribed for specific offences.

For all these reasons, the province recently decided that provincial offences committed by adults should be prosecuted under a simpler, more flexible procedure than that contained in the Criminal Code. In 1980, The Provincial Offences Act came into force and established two distinct modes of commencing legal proceedings, depending on the seriousness of the offence. At present, approximately 95% of all provincial charges against adults are dealt with under the streamlined provisions of Part 1 of the Act, which was designed for truly minor offences. The remainder are dealt with in a more formal and traditional manner under Part III.

Part 1 proceedings may be commenced by police officers or other enforcement personnel who have been designated as "provincial offences officers" by a cabinet minister of the provincial government. For example, conservation officers may be designated provincial offences officers. If the person charged (the defendant) has been served with an "offence notice", he may choose one of three options:(1) to plead guilty and pay the set fine shown on the offence notice;(2) to plead guilty with an explanation and appear before a justice to make submissions as to penalty; or(3) to plead not guilty and request a trial. If the defendant does not exercise one of these options within 15 days after being given the offence notice, the court shall examine the "certificate of offence". If the certificate is valid the court shall enter a conviction and impose the set fine.

Penalties under Part I of the Act are limited to three hundred dollars or the maximum which is stipulated in the statute creating the offence, whichever is the lesser. The set fine is the amount which has been fixed by the provincial offences court for use on the offence notice.

As an alternative to an offence notice a summons can also be issued under Part I. In that case a trial will be held and on conviction the justice may impose whatever penalty he sees fit, subject to the limitations established by law, including the $300 maximum fixed under Part 1. A term of imprisonment cannot be imposed when proceedings are commenced under Part I.

Under Part III of The Provincial Offences Act an information may be laid before a justice of the peace by any person, whether or not he is a provincial offences officer. If the justice is satisfied that there are reasonable and probable grounds to believe that an offence has been committed, he may issue a summons which commands the defendant to appear in court. A trial will be held in every case, whether the defendant appears or not, and the court may impose any sentence that is permitted by law. The restriction of a maximum fine of $300 does not apply to Part III proceedings.

How should the province deal with young persons who commit offences against provincial statutes?

How to deal with young persons who commit provincial offences raises a very difficult policy question. One of the principles of justice is that like cases should be dealt with alike. The perennial problem is to decide what cases are alike. Should a 14-year-old who drinks under age be subject to the same legal process and penalties as a 16-year-old who drinks underage, or should he be dealt with in the same manner as a 14-year-old who smokes marijuana? In other words, should people who commit the same offence be dealt with the same, so far as possible, regardless of age? Or, should all young persons in the same age group be dealt with the same, so far as possible, regardless of the offence they commit? The question may also be raised as to whether offences committed by different age groups are of an equal degree of seriousness. For example, is a driving offence by a 14-year-old who cannot legally obtain a license of the same degree of seriousness as the same driving offence committed by a 16-year-old who has a license?

In very broad terms, there are three basic approaches that the province can take towards persons between the ages of twelve and sixteen who commit provincial offences:

Option 1: Make the Young Offenders Act applicable to provincial offences: deal with all 12-16 year olds using the same legal process.

This approach would involve the incorporation of as much of the Young Offenders Act as is appropriate into the procedure for prosecuting provincial offences. As a result, two young persons, one of whom committed a criminal offence and the other a provincial offence, would be dealt with in virtually the same manner and in the same court, namely, the youth court.

There would be a greater emphasis on the legal rights of the 14-year-old than there would be for those of the 16-year-old who is dealt with as an adult who commits a provincial offence. In addition using the Young Offenders Act would provide more opportunity for dealing with the "needs" of the young person.

Such an approach, however, would expose the 14-year-old to potentially more "serious" penalties than the 16-year-old and would tend to stigmatize the young person as a "criminal" as provincial offences would be dealt with in the same way as criminal offences. In addition, this approach may be viewed as an over-reaction to minor behaviour and as a consequence there may be some reluctance to initiate proceedings. Such a result could be viewed as beneficial or deleterious, depending on one's viewpoint concerning the desirability of a vigorous law enforcement policy.

Option 2: Utilize the existing procedures under The Provincial Offences Act as far as practicable: deal with all provincial offences in the same way regardless of age.

This approach would result in treating the young person the same as an adult offender to the fullest extent permitted by the law. It would follow the philosophy of The Provincial Offences Act in accepting the nature of the offence as the essential determinant of the character of the legal proceedings; in essence, it is an offence-specific approach, emphasizing the deeds, rather than the needs of the offender. Accordingly, young persons would ordinarily be charged under Part I of the Act, and would be able to choose whether to request a trial, plead guilty with an explanation, or pay a fine out of court. All proceedings would take place in the provincial offences court, usually located with the provincial court (criminal division) and ordinarily presided over by a justice of the peace, except where a statute specifically provides that the provincial court (family division) is to deal with the offence.

This process would be less intrusive for the young person, and would focus on the fine as the ordinary penalty imposed as a consequence of conviction. If the defendant appears, upon conviction the provincial offences court must ask him if he has anything to say before sentence is passed, and may make inquiries concerning the defendant's economic circumstances. The Provincial Offences Act also allows the court, in exceptional circumstances, to impose a fine which is less than the minimum amount prescribed by law or to suspend the sentence. In addition, the court must ask the defendant if he wishes an extension of the time for payment, and if a request is made in good faith, must extend the time for payment by ordering periodic payments or otherwise. Further applications for extensions of time are also permitted.

This approach places the responsibility on the offender to assert his legal rights and there would be potential problems because of the young person's questionable ability to understand his legal rights and duties. One serious consequence is that if a fine were not paid The Provincial Offences Act ultimately could result in the imprisonment of the young person. The Provincial Offences Act does not contain any provisions for notifying or otherwise involving the parents of a young person in the proceedings. Also, there is the possibility that the simplicity of the procedure might "widen the net" of young offenders by facilitating prosecutions; once again, this result may or may not be viewed as desirable.

Option 3: Develop procedures which incorporate elements of both the Young Offenders Act and The Provincial Offences Act: deal with all provincial offences by young persons in the same way but provide for their special needs.

One of the fundamental principles of the Young Offenders Act is that all persons who commit an offence should bear responsibility for their acts, but that young persons should not in all circumstances be held accountable in the same manner as adults would be. (In contrast, the Juvenile Delinquents Act tends to deal with all young persons in the same manner, regardless of the offence they commit.) Accordingly, a third option which can be considered is to treat all young persons who commit provincial offences as responsible for their conduct but not hold them accountable in the same manner. This approach would combine elements of both the Young Offenders Act and The Provincial Offences Act. The presumption would be that young persons should be dealt with under the principles of The Provincial Offences Act but that, in accordance with the principles of the Young Offenders Act, they should not be held accountable in the same manner or suffer the same consequences as adults. It would be necessary to develop a balance between an offence-oriented and an offender-oriented procedure, since the special needs of certain young persons may require a suitable response from the judicial system, even where the offence itself is of a fairly minor nature. Accordingly, the exact procedure to be developed would have to be flexible enough to accommodate the special needs of young persons at various stages in the judicial process.

What are some of the issues to be considered in choosing a provincial offences policy for young persons?

A great many factors and issues must be considered in determining what system to use for provincial offences committed by young persons. Some of these issues are examined below to show how each option would or could apply.

As discussed previously the three options are:

Option 1: **applying The Young Offenders Act**

Option 2: **applying The Provincial Offenders Act**

Option 3: **a combination of approaches**

For discussion purposes, the example of a 14-year-old young person who consumes liquor contrary to s.44(3) of The Liquor License Act c.244, R.S.O. 1980, will be used.

Initiation of Proceedings

Who would commence proceedings?

Option 1: If the Young Offenders Act applied the police normally would be responsible for enforcement. Where a police youth bureau exists the case would probably be referred to the youth bureau to decide if charges should be laid.

In addition, under this option a private person, such as a parent or a park supervisor, could lay a charge and commence a private prosecution.

Option 2: If The Provincial Offences Act applied, and an offence notice could be issued, there might be more incentive to have the police patrol officer issue the offence notice directly to the young person.

For some provincial offences a specially designated provincial offences officer, such as a conservation officer or a municipal law enforcement officer, would be able to charge the young person.

A private prosecution could also be initiated.

Option 3: The Young Offenders option has the practical advantage that where police youth bureaus exist the young person would be dealt with by personnel trained and experienced in dealing with young persons. Fewer actual charges probably would be laid. The Provincial Offences option is more attractive if it is desired to maximize the opportunities to confront the young person directly and immediately with his breach of the law and to hold him accountable.

Under Option 3 consideration could be given to means by which the directness of the Provincial Offences procedures could be tempered by the screening practices employed by youth bureaus for young offenders.

How would proceedings be commenced?

Option 1: If The Young Offenders Act applied proceedings would be commenced by issuing an appearance notice and laying an information or by laying an information and issuing a summons. In either case the young person would be required to appear in court at a certain time and place.

Option 2: If The Provincial Offences Act applied, the officer would have four methods of commencing proceedings against the young person consuming liquor under age:

- He could use the Part I certificate of offence procedure (described above) which gives the young person three options for responding: plea of guilty and payment of set fine; plea of guilty with an explanation; and plea of not guilty followed by hearing.
- He could issue a Part I summons resulting in a trial but with limited penalties.
- He could lay an information and have a summons issued under Part III.
- Under Part III he could serve a summons (like an appearance notice) and lay an information, provided that a justice of the peace does not cancel the summons.

Option 3: Applying the Young Offenders Act would mean that the young person would have to appear in court in every case, even if he wanted to plead guilty. Using The Provincial Offences Act certificate of offence procedure would mean that the young person could minimize the significance of his offence simply by mailing in the amount of the set fine to the provincial offences court.

Although the broader range of options available under The Provincial Offences Act may seem more appropriate to the variability in the needs of young people, perhaps the full range of options is not appropriate for all cases. For example, the certificate of offence procedure may be sufficient for offences such as riding a bicycle without a horn, whereas drinking under age might be dealt with by commencing proceedings under Part III leading to a trial. Or, consideration could be given to retaining the certificate of offence procedure, but providing different consequences. Another alternative would be to permit a case commenced by a certificate to be transferred to a Part III proceeding. Of course, it would be possible to prohibit use of the certificate of offence procedure entirely so that under Part I only the summons procedure could be used.

Notice to Parents

Option 1: If the Young Offenders Act applied, the person who issued the summons or appearance notice to the young person would be required to give notice in writing to the parent as soon as possible. Notice would also have to be given if the young person were arrested or detained.

Option 2: Because The Provincial Offences Act does not now apply to young persons, it does not contain any provisions for notifying the parents of the young person or for otherwise involving the parents of the young person in the proceedings.

Option 3: A third option could require notice to be given to parents as in the case of young offenders but in a manner more appropriate to the principles of The Provincial Offences Act. For example, the notice requirement might exist only where a summons is issued under Part I or proceedings are taken under Part III. Or, notice might be required in all cases, but provision be made for oral notice. Another alternative is to limit the notice requirement to certain types of offences.

Arrest

There are very few provincial offences for which a power of arrest is granted. There is no power of arrest for drinking under age although there is a power of arrest under The Liquor Licence Act where a police officer finds a person contravening the Act and such person refuses to give his name and address or there are reasonable grounds to believe that the name and address given is false. There is a power to arrest a person found intoxicated in a public place where it is necessary for the safety of the person or some other person to make the arrest. There are arrest powers under The Trespass to Property Act, The Game and Fish Act, and for some offences under The Highway Traffic Act.

Because the Juvenile Delinquents Act deals with provincial offences by a young person as a criminal offence it could be argued that a young person may be arrested for a provincial offence, even though were he sixteen years of age or more he could not be arrested.

Option 1: If the Young Offenders Act applied the power of arrest would not automatically extend to all provincial offences, as it does now under the Juvenile Delinquents Act, but the conditions and procedures for arrest where an arrest can be made would be the same as those contained in the Criminal Code.

Option 2: If The Provincial Offences Act applied, there would be a power of arrest only where arrest is specifically authorized by the statute creating the offence.

Option 3: If a general power of arrest for provincial offences by young persons were permitted, as it is under the Juvenile Delinquents Act, then the provisions of the Young Offenders Act and the Criminal Code could be made to apply. However, the opposite approach may be more appropriate for young persons: that is, there should be no power of arrest for provincial offences, even where an adult could be arrested. Or, the power of arrest could be limited to cases in which it is necessary to establish the identity of the accused, so that the officer does not have to charge the young person with the more serious criminal offence of obstructing justice. Another alternative is to restrict the power of arrest to cases in which a warrant has been issued. A further issue is whether there should be limitations on the powers of a private citizen to arrest a young person.

Pre-Trial Release and Detention

If there is a power of arrest then there must be a provision for pre-trial release or detention.

Option 1: If the Young Offenders Act applied, provisions of the Criminal Code would apply except where they are inconsistent with the Young Offenders Act. Under the Young Offenders Act, for example, young persons must be detained separately from adults. They may also be placed in the care of a responsible person. However, the release provisions are the same as those for adults, with the result that there would be no limit on the amount of bail that could be ordered, even for a minor provincial offence, such as trespass to property.

Option 2: If The Provincial Offences Act applied, understandably there is not now a provision for detention of young persons separate from adults. In Part I proceedings cash bail is limited to the amount of the set fine ($53 for trespassing) and in Part III proceedings the maximum cash bail is $1,000. Furthermore, cash bail may be required only in exceptional circumstances.

Option 3: A third option could combine the provisions of the Young Offenders Act and The Provincial Offences Act to require separate detention where practicable, while imposing restrictions on the grounds for detention and bail. Another approach would be to emphasize releasing the young person in the care of a responsible adult.

The Court

Option 1: If the Young Offenders Act applied, provincial offences would be tried in the youth court which will probably be the provincial court (family division) presided over by a family court judge.

Option 2: If The Provincial Offences Act applied, offences would normally be tried in the provincial offences court, except for a limited number of offences over which the provincial court (family division) has been specifically given jurisdiction, such as offences under the Minors' Protection Act (in respect of selling tobacco to minors). The provincial offences court is ordinarily presided over by a justice of the peace. The provincial offences court is usually located with the provincial court (criminal division) and the justice of the peace is under the supervision of the provincial court (criminal division).

Option 3: If neither of the above options is appropriate for young persons who commit provincial offences a number of alternatives could be considered. The provincial offences court for young persons could be held on the premises of the provincial court (family division) and be presided over by a family court judge. Or, justices of the peace in the provincial offences court could deal with Part I proceedings and family court judges could deal with Part III proceedings. Another alternative would be to train family court justices of the peace to deal with provincial offences. A further possibility is to provide for a waiver, at the option of either the prosecutor or the defendant, from a justice of the peace to a judge.

The evaluation of these alternatives would have to take into consideration the administrative implications of placing new workloads in different systems.

Sentencing

Option 1: If the Young Offenders Act applied, the young person who was convicted of consuming liquor under age would be subject to the same penalties as young persons convicted of possessing marijuana. Young persons would then be subject to a broad range of sentences, subject to the condition that no sentence may exceed the maximum penalty to which an adult would be liable. The range of dispositions includes:

- o absolute discharges
- o a fine not exceeding $1,000
- o payment of compensation for damage to property

- o restitution of property
- o performance of personal services for the victim
- o community service
- o probation not exceeding two years
- o custody not exceeding two years.

Option 2: If The Provincial Offences Act applied, the young person would be subject to the penalties set out in the statute creating the offence. For consuming liquor under age, the defendant is subject to the general penalty of The Liquor Licence Act which is a maximum fine of $10,000 or imprisonment for a term of not more than one year, or to both. If, however, the proceeding was commenced under Part I of The Provincial Offences Act, he would be subject to the set fine if a certificate of offence was used and he pleads guilty ($53 for consuming liquor under age), or a maximum fine of $300 (but not imprisonment) if a summons was used. If proceedings were taken under Part III of The Provincial Offences Act the young person would be liable to the penalty imposed by the statute. However, The Provincial Offences Act also empowers the court in Part III to make a probation order when sentence is suspended or in addition to a fine or imprisonment. In some circumstances where a probation order is made there is potential power to impose a condition that the defendant:

- o satisfy any compensation or restitution required by an Act (for example, The Trespass to Property Act) or
- o where the offence is punishable by imprisonment, perform a community service.

Option 3: Specifically incorporating the sentencing powers of the Young Offenders Act would make the young person liable to custody for every provincial offence, as he is now under the Juvenile Delinquents Act. He may also be liable to a higher fine. For example, the maximum fine for the provincial offence of damage in a cemetery is only $40. On the other hand, compensation or community service could be ordered without the further restrictions of a probation order and regardless of the enabling provisions of a particular provincial statute.

The Provincial Offences Act, of course, offers the possibility of paying only a set fine in the vast majority of cases and little likelihood of incarceration.

A third option could attempt to combine the features of options 1 and 2 that are suitable for sentencing young persons who commit provincial offences. It may be possible to consider a different level of set fines for young persons. Perhaps it should be possible to order community service without probation. Consideration could be given to the need for provisions for absolute discharge. The question of incarceration for young persons who commit provincial offences may also require review.

Clearly, there is a wide variety of choices available in this area.

Failure to Pay Fines

Insofar as The Provincial Offences Act system is being considered as an option for provincial offences by young persons, consideration must be given to collection of fines. A penalty other than a fine is relatively rare for a provincial offence. However, questions arise as to whether young persons would normally be able to pay a fine, and what consequences might flow from failure to pay.

Option 1: Although fines can be levied under the Young Offenders Act, in practice it is unlikely that fines would assume the importance they have in the provincial offences system. Accordingly, the issue of failure to pay is not so great.

The Young Offenders Act specifically excludes the provisions of the Criminal Code that relate to enforcement of fines for summary conviction offences. (Under the Criminal Code the court may order that in default of payment of a fine, the defendant shall be imprisoned for not more than six months.)

The Young Offenders Act has two procedures for dealing with failure to pay, depending upon the reason for the failure. If the young offender is unable to pay, the youth court can vary the penalty or make a different disposition that is not more onerous. However, if the young offender wilfully refuses to pay, the Attorney General can commence proceedings against him, and if he is found to have wilfully refused or failed to comply, the youth court may vary the penalty or impose a new penalty, including custody to a maximum term of six months.

Option 2: Under The Provincial Offences Act there are in fact a number of means for enforcing fines. However, suspension of a license or civil enforcement are not likely relevant to most provincial offences that would be committed by young persons. Thus, the ultimate means under The Provincial Offences Act of dealing with persons who default in payment is imprisonment. Nevertheless, imprisonment is not an "automatic" consequence of failure to pay. The defendant must be given an opportunity to be heard and it must be shown that all reasonable methods of collecting the fine have failed or would not likely result in payment within a reasonable time in the circumstances. In "exceptional circumstances" the court may decline to order imprisonment for default if imprisonment would "defeat the ends of justice".

Option 3: It seems likely that young persons who fail to pay a fine would be exposed to a greater likelihood of imprisonment under The Provincial Offences Act than under the Young Offenders Act. If it is necessary to reduce this risk, one option would be to eliminate the risk completely by prohibiting imprisonment for default. The young person would then be liable for a term of custody only where it was imposed at trial in a Part III proceeding.

Another alternative could be developed by using the Young Offenders Act as a model. Failure to pay could result in a hearing with power to vary the fine or impose a different penalty. Such a provision would have to be developed in conjunction with the decision made about the range of sentencing powers.

A further possibility would be the creation of a separate offence and separate penalties for failure to pay.

Review of Dispositions

Option 1: The Young Offenders Act provides for reviews of dispositions (see 11 Reviews). A review of custody orders exceeding one year is mandatory. Reviews of dispositions in other cases are optional. The review is in addition to the right of appeal. It appears that the purpose of the review is to ensure that the original disposition is still appropriate to the young person's needs and circumstances. On a review, the court may confirm or terminate the original disposition, or vary it, but it cannot impose more severe penalties, unless there has been a wilful failure to comply.

Option 2: Under The Provincial Offences Act only a probation order may be varied and a probation order may be made only pursuant to Part III proceedings. Accordingly, there would not be many opportunities for review of penalties imposed under The Provincial Offences Act. However, to the extent that fines are almost exclusively used under The Provincial Offences Act, the need for review may not be great. The Provincial Offences Act permits the court to inquire into the economic circumstances of the defendant before sentencing and the court shall extend the time for payment where a request for an extension is made in good faith.

Option 3: As an alternative, reviews might be limited to Part III proceedings. Or, they might exclude fines altogether. Another option would be to provide for reviews only with respect to custodial sentences.

Here, also, the decision about reviews will depend upon the type of dispositions that will be available for young persons who commit provincial offences.

Legal Representation

Option 1: If the Young Offenders Act applied, the procedures would emphasize the importance of informing the young person of his rights to counsel and ensuring that legal counsel would be provided for his trial if he requests it. The Young Offenders Act provisions are based on the fact that the young person is being charged with a criminal offence with consequences that would affect his liberty and his status.

Option 2: If The Provincial Offences Act applied, there would be no specific statutory provisions dealing with the young person's opportunity for legal counsel when charged with a provincial offence. Presumably, he would be entitled to have legal counsel on the same basis as an adult charged with a provincial offence. It would be the responsibility of the young person to inform himself of his rights and obtain legal advice and assistance, and to seek legal aid where appropriate.

Option 3: Although it may not be necessary to guarantee the young person the right to independent legal counsel if he receives a certificate of offence because his bicycle did not have a horn, it may be desirable to recognize that young persons do not have the economic capacity to retain a lawyer when they wish one. In some cases, too, charges may result in serious consequences for the young person.

The range of options for provincial offences will be influenced by the provincial policy with respect to legal representation of young offenders (see 5 Legal Representation) and by the major policy decision as to whether provincial offences by young persons will be dealt with on a quasi-criminal basis or a provincial minor-offences basis.

In conclusion, the issues outlined above are obviously only a few of the issues that have to be considered in developing a provincial policy with respect to provincial offences by young persons. It is also obvious that the options identified above are only a few of the many options that could be considered. At this stage, there is too much to be learned to attempt to state a preference for one course of action rather than another.

3. Truancy

In Ontario, truancy (where a pupil of compulsory school age does not attend school as required) is dealt with pursuant to two provincial statutes: The Education Act and The Child Welfare Act.

The Education Act creates two separate offences to enforce compulsory education in Ontario, distinguishing between truancy as a result of parental or other adults' actions, and truancy as a result of a child's refusal to attend school. The Education Act s.29(1) makes it an offence for a parent or guardian of a child of school age (six to sixteen) to neglect or refuse to cause the child to attend school. The section creates a summary conviction offence for which the penalty is a fine not exceeding one hundred dollars. The Education Act s.29(5) also provides that "a child who is required by law to attend school and who refuses to attend or who is habitually absent from school is guilty of an offence and is liable to the penalties provided for children adjudged to be juvenile delinquents under the Juvenile Delinquents Act".

The Child Welfare Act also deals with the problem of truancy and in s.20(1)(b)(ix) includes in the definition of a child in need of protection one who "without sufficient cause habitually absents himself from his home or school".

Provincial statistics for Ontario in 1980-81 indicate that there were 1,070 persons charged under s.29 of The Education Act. There are no readily available statistics of the number of truancy-related cases under The Child Welfare Act.

The proclamation of the Young Offenders Act, along with the repeal of the Juvenile Delinquents Act, will affect s.29(5) of The Education Act which concerns children who refuse to attend school as required. A parent, however, may still be charged under s.29(1) for failure to cause a child to attend school.

The need to amend, or possibly repeal, s.29(5) of The Education Act provides an opportunity to consider how habitual truancy should be dealt with in the future. The basic issue to be resolved is:

Will the educational system continue to require punitive means to enforce compulsory education for habitual truants?
If not, what alternative responses are available?

Habitual truancy may result from the inter-relationship of a variety of factors, both social and educational. Disorganized families, parental neglect including child exploitation, peer groups and social maladjustment problems may be contributing social causes. The lack of an appropriate response to a learning problem by the school system, or the student's attitude particularly between the ages of 12 to 16 that the school is no longer relevant to the life he/she wants to lead, may encourage truancy as well.

In view of the above discussion of the root causes of truancy, there are several feasible options available to the province: to continue present practice by retaining the offence of truancy; to deal with truancy under child welfare; or alternatively to deal with truancy in the educational system. A combination of various aspects of these options could also be a feasible approach to habitual truancy.

(i) Truancy as an Offence

If it appears appropriate for truancy to be retained as an offence, and for truants to continue to be referred to the courts, various options could be considered as to the dispositions which would be provided in an amended Education Act. The dispositional alternatives of the Young Offenders Act could be used. Another option could be to substitute the dispositions available for other provincial offences (see discussion of Provincial Offences 12-16, and Children Under Twelve). A third option could be to create new dispositions specifically for the offence of truancy and these might be limited, for example, to those up to but not including removal from the home. The youth court would have the authority to inquire into every aspect of the child's home and school situation before rendering judgement. In many cases the court process itself may result in a voluntary rehabilitative measure being agreed upon.

A variation of this approach could be to use it to augment the approaches in (ii) and (iii) below if it were felt that expanding the role of the attendance counsellor and establishing education review committees would not be sufficient in all cases. Resolving the truancy problem within the educational system would be the main response and could be particularly beneficial where truancy results primarily from educational or vocational factors. Where it becomes apparent that truancy is primarily related to social factors (neglect or family problems) then the matter could be referred to the children's aid society for investigation and assessment. Retention of truancy as an offence under The Education Act could provide a further response which may be appropriate in cases where the child still wilfully refuses to participate in programs and arrangements developed in the other approaches.

On the other hand, it is argued that coercive, punitive intervention in a court only adds to a child's sense of alienation and failure, particularly when truancy may be due to learning problems that have not been resolved within the school system, or social factors. It is questionable whether charging a child with an offence is an adequate and/or appropriate response to any of the root causes of truancy. Additionally, there can be an inequitable application of the law depending on the quantity and quality of the resources available in each community.

(ii) Using Child Welfare

An alternative to charging a child with an offence would be to deal with truancy using a child welfare approach.

(a) Habitual truancy could be a specific item in the definition of a child in need of protection as in the current Child Welfare Act definition which includes a child who "without sufficient cause, habitually absents himself from his home or school" s.20(1)(b)(ix).

(b) Alternatively, truancy could be dealt with as a relevant fact in a protection hearing under The Child Welfare Act. This approach would prevent the use of The Child Welfare Act as a direct response to a child being truant and would ensure that a finding is only made where the child is in need of protection, or possibly in need of supervision. In contrast to the present situation under The Child Welfare Act, missing school by itself, however, would not be sufficient to support a finding of "in need of protection". In many cases investigation may demonstrate that habitual absence from school is symptomatic of other problems which, taken in combination, may then support a finding of "in need of protection".

It would appear that dealing with truancy as a relevant fact in a protection hearing is the most appropriate response to truancy cases which result from social factors. However, although this response may adequately deal with the disorganized family, it may not be as appropriate where the root cause of the habitual absence from school is an educational problem.

The basic approach that the children's aid society uses in dealing with truancy is voluntary counselling and mediation. A skilled attendance counsellor would also be able to provide these services. In cases where the family situation is not severe enough to justify removal from the home, the children's aid society is often not any more successful in dealing with the truancy problem than the parents or attendance counsellors. In many cases, it is questionable whether removal from the home will resolve the truancy problem, as such an approach often puts more stress on the child and family.

(iii) Dealing with Truancy in the Educational System

This option, which assumes repeal of provincial legislation dealing with habitual truancy, represents an attempt to enforce compulsory education without a legal consequence or penalty for deliberate refusal to attend school. Under this option there would be an increased use of trained attendance counsellors, preventive measures, school program alternatives, and supportive community services.

The skilled attendance counsellor would be the primary element in this approach by assuming a critical preventive role in ensuring that all available resources are exhausted when dealing with cases of truancy. The attendance counsellor, provided with adequate time and training, may be effective in focusing on the real underlying root causes of truancy rather than responding to the superficial sympton of habitual absence from school. Truancy may often be resolved by a skillful counsellor who is able to refer the student to an appropriate agency, to find a program to assist the student, or to help the student to modify his attitudes towards school and upgrade deficient learning skills.

The view has been advanced that without the possibility of ultimate recourse to the juvenile court the attendance counsellor might lose a valuable alternative that otherwise would be available to him/her. It has been suggested that the court is often highly successful in inquiring into truancy cases and directing the truant child to the agency best suited to his/her needs. On the other hand, some Canadian provinces do not define truancy as an offence for children. Rather, truant children are dealt with within the school or child welfare systems while parents may still commit an offence by failing to cause their child to attend school.

An additional element in the educational system's approach could be the establishment of an education review committee by each school board. The school attendance counsellor could refer cases to this committee when, in the counsellor's opinion, all available resources have been exhausted. The committee would be composed of trustees, teachers, representatives from community agencies, and interested citizens and would hold a hearing involving the child, the parents, and the local school authorities in an effort to discuss and resolve the problem. The committee's role would be to seek a resolution of the problem by attempting to negotiate constructive alternatives. As such it would consider what the school has tried, or is prepared to consider for the future, what the parents and/or child feel should be done and what community resources are available. The attendance counsellor would play a key role by presenting the evidence in the case and facilitating the implementation of any recommendation the committee determines. If the parents refused to attend, the committee could recommend that the attendance counsellor charge the parent with failing to cause their child to attend school under The Education Act s.29(1).

Education review committees could prove to be particularly beneficial where truancy results from unresolved educational-vocational problems. If, as a result of the committee's investigation, it became apparent that non-attendance was due to a learning problem or any other related factor, a referral could be made to an appropriate agency. If it were felt that the non-attendance was related to neglect or family problems, then the matter could be referred to the children's aid society for investigation and assessment. Where the children's aid society refuses or fails to provide service, the option exists under The Child Welfare Act s.22(2) for any person to apply to the court for a hearing on the matter.

All school boards in Ontario have established committees which deal with cases of early school leaving. The mandate of these committees could be expanded to encompass truancy cases or separate committees could be established.

4. The Juvenile Delinquents Act Offence of "Sexual Immorality or Any Similar Form of Vice"

The proposed Young Offenders Act is restricted to offences against the Criminal Code and other federal statutes. The Criminal Code provisions for sexual offences would therefore apply. The Bill would not, however, continue the present more general and non-specific offence of "sexual immorality and any similar form of vice", commonly referred to as a status offence, which is part of the definition of juvenile delinquent in section 2 of the Juvenile Delinquents Act.

Most recent statistics related to sexual immorality show that in Ontario, in 1980, there were no charges recorded against children under twelve and 18 charges were recorded against young persons twelve years of age or over.

How will the Province respond to behavior that was previously considered the status offence of "sexual immorality" under the Juvenile Delinquents Act?

Although the Bill excludes this offence, there may still be the behavior which gave rise to the former charges. In responding to such behavior, however, the Province would not intend to create a provincial status offence of sexual immorality which would present, as it does now, several difficulties.

The concept of what behavior constitutes "sexual immorality and any similar form of vice" is so vague and uncertain that young persons may not know in advance whether they are in fact committing an offence. This vagueness and ambiguity has resulted in some juveniles being adjudged delinquent and dealt with under the Juvenile Delinquents Act and others being discharged for similar behavior. Also, the result frequently may be a response which appears far in excess of that warranted by the young person's conduct.

Where appropriate, action could be taken under child welfare legislation to provide necessary protection or supervision. The behavior may be symptomatic of a more serious problem in the young person's life and such a young person may benefit from outside assistance. However, a court response based on an offence is not the only way to provide required help or to direct people to services.

IV. FUNDING

At present, most costs related to the administration of juvenile justice are the sole responsibility of the Province. Under the present federal-provincial cost-sharing agreement the federal government does contribute to the cost of some juvenile correctional services and legal aid. In addition, the Province shares the cost of residential probation placements with the municipalities.

The proposed Young Offenders Act will make it necessary to re-examine the present funding arrangements. Changes in existing services will necessitate a re-examination of funding arrangements and federal-provincial cost-sharing agreements will be negotiated.

Federal Support

Under a Young Offenders Agreement services provided to juvenile delinquents committed to a training school (s.20(1)(i)) are cost-shared at a rate of approximately 50%. Training, salary, travel and administrative costs of after-care services provided by probation and after-care officers are also part of the cost-sharing arrangement.

Under the existing Canada Assistance Plan agreement services provided to juvenile delinquents committed to the care of a children's aid society (s.20(1)(h)) are cost-shared at a rate of approximately 50%.

The Young Offenders Act provides for the negotiation of federal-provincial cost-sharing agreements for "the care of, and services provided to, young persons dealt with under the Young Offenders Act". (s. 69) These agreements are expected to be negotiated shortly when the specific services to be cost-shared will be determined.

Municipal Support

In the case of a disposition made under the Juvenile Delinquents Act (s. 20(1)) the court may make an order upon the parents or municipality to contribute to the support of a child. Where such an order is made upon the municipality, the Juvenile Delinquents Act provides that the municipality may recover the sum from the parents. (s. 20 (2))

Prior to the decision of Mr. Justice Holland in Re Peel Region and Viking Houses in April of 1977, family courts were ordering residential placements of juvenile delinquents under clauses (d), (f) of s.20(1) and (g) of the Juvenile Delinquents Act with a support order made against the municipality under s. 20(2) of the same Act. Although the latter clause authorized the municipality to recover the costs from the parents this was seldom, if ever, done. In 1976, the Province, through the Ministry of Community and Social Services, began to cost-share these placements with the municipalities at a 50% rate, and continues to do so under The General Welfare Assistance Act.

The jurisdiction to make these orders was challenged when the Holland decision was released in 1977. He concluded that neither clauses (d), (f) or (g) of the Juvenile Delinquents Act authorized the court to order the placement of juvenile delinquents in group homes. The Supreme Court of Canada upheld the Holland decision in 1979.

Since that decision, the courts have made orders under s.20 (1) (d) of the Juvenile Delinquents Act committing children to the care of a "suitable person", such as a group home director, with a support order made against the municipality. These orders were pronounced valid by Madame Justice Van Camp in another case, Re Peel Region and Mackenzie, 1978. This decision was upheld by the Ontario Court of Apeal in 1980, and is now under appeal to the Supreme Court of Canada.

In addition, probation services may contact a children's aid society to arrange non-ward care by agreement under The Child Welfare Act for residential placement of juveniles on probation. This is a voluntary arrangement between the juvenile, his parents and the society, and involves a maximum contribution of 20% by the municipality.

In contrast to the Juvenile Delinquents Act, the Young Offenders Act is silent on responsibility for costs. This leaves the matter to the provinces.

Cost-sharing discussions about all children's services are currently taking place between the Province and the municipalities which presumably will result in modifications to the present cost-sharing arrangements. At present, the average municipal contribution to all children's services is about 8%. The residential probation placements involve a 50% contribution by municipalities, other services like children's aid societies involve a maximum of 20% by municipalities, and many programs are funded 100% by the Province.

Parental Support

Under the Juvenile Delinquents Act the state assumes the role of a protective parent. In keeping with this approach Ontario's Training Schools Act and Child Welfare Act currently provide that all juveniles under these Acts may have wardship status until age 18, unless wardship is terminated earlier. During this time parental rights and responsibilities with respect to children are suspended.

As part of their regular admission procedures training schools do apply for and collect the family allowance on behalf of all children who become training school wards under The Training Schools Act (Ontario) in conjunction with s. 20(1)(i) of the Juvenile Delinquents Act. The family allowance reverts to the parents when the child returns home. There is no provision in The Training Schools Act for maintenance orders against parents.

When a child is committed to the care of a children's aid society under s.20(1)(h) of the Juvenile Delinquents Act the society also collects the family allowance payments by direct application. The Child Welfare Act, (Ontario) provides for the court to assess the parent's (or the child's) ability to contribute to the cost of care and to order such payment. This provision is used infrequently and even when such an order is made it is not always enforced.

Under non-ward care by agreement the societies are able to charge fees for service or make any financial arrangements that are acceptable to the parents and to the society. However, in practice charging fees in excess of the family allowance is relatively rare.

In contrast to the philosophy of the Juvenile Delinquents Act, the proposed Young Offenders Act emphasizes that "parents have responsibility for the care and supervision of their children" (s.3(1)). As such, it is expected that parents would remain involved in the care of their children whenever possible, and would retain their legal rights and responsibilities during the term of a disposition. This raises the question of whether parents should be financially involved beyond the family allowance payments.

Children's Aid Societies

Some increase in the workload of children's aid societies may result if behavior of children under 12, truancy, and the former Juvenile Delinquents Act offence of sexual immorality were to be dealt with in the child welfare stream. Also, the introduction of determinate dispositions without Crown wardship may result in greater demands on children's aid societies in those cases where the new juvenile justice system response is seen as not meeting the treatment needs of the young person.

However, the broad role that children's aid societies now adopt on a voluntary basis with families which have younger children engaging in minor delinquencies is not that much different from the role which is proposed under the child welfare option for children under twelve. (see Children Under Twelve)

Further, under the proposed Young Offenders Act the impact upon the societies for young persons over twelve may be greatly reduced because the section of the Juvenile Delinquents Act dealing with committal to the care of the children's aid societies (2.20(1)(h)) is deleted. However, with the narrowing of the juvenile justice focus and a clearer distinction between the juvenile justice and child welfare systems there could be a continuing demand for child welfare services to the young person and family.

Given this range of possibilities it is difficult at this point to arrive at any reliable conclusions about the workload impact on the societies. Obviously this will be another aspect that will need to be assessed after provincial policy has been decided, and monitored after the Young Offenders Act is proclaimed.

V. STATISTICS

The statistics in this section, related to charges under the Juvenile Delinquents Act for Ontario in 1980, are the most recent available from Statistics Canada.

With the exception of Table 8, the tables in this section indicate the number of charges of delinquency disposed of in Ontario juvenile courts. The count used in these tables is the charge not the person. Therefore a juvenile may be reflected more than once depending on the number of delinquencies with which he/she was charged.

The tables are included to provide a quantitative context for considering implementation issues. However, it cannot be assumed that current experience will continue under the proposed Young Offenders Act. Police, prosecutors, legal counsel, judges or the accused young person may make different decisions under different legislation and procedures.

It is also important to note that the statistics do not represent the extent of delinquent behavior in the province. The tables do show the extent to which juvenile behavior resulted in charges that were dealt with by the juvenile courts in Ontario in 1980.

Statistical reports of the Provincial Courts (Family Division) show total numbers of charges some 1/3 higher than totals in reports from Statistics Canada: total charges disposed for 1980-81 were 33,623 under the Juvenile Delinquents Act and 1,184 under the Education Act. These reports are based on different 12 month periods, the Court reports being for the fiscal year ending March 31st while the Statistics Canada reports are for the calendar year. The tables included in this paper use Statistics Canada data, however as these contain details of charges, ages, etc. not found in the Court data. It should be noted therefore, that the tables may be under-reporting the information and care should be taken in using specific numbers.

Definitions of terms used are provided following the tables.

TABLE 1

NATURE OF DELINQUENCY BY AGE (7-11) AND OFFENCE, 1980 (ONTARIO)

OFFENCE	AGE 7	8	9	10	11	Total
Break and enter	6	19	45	100	217	387
Theft under $200	3	17	30	107	242	399
Mischief	3	10	25	50	79	167
Possession of stolen goods	-	5	10	56	58	129
Assault	-	-	2	9	23	34
Theft over $200	-	6	3	13	44	66
Arson	-	5	8	9	9	31
Robbery	-	-	1	2	4	7
Offensive weapons	-	-	1	1	5	7
All others	-	1	5	9	38	53
Total Criminal Code and Federal Statute Violations	12	63	130	356	719	1280
Education	1	-	2	2	15	20
Traffic	-	-	-	3	5	8
Liquor	-	-	-	2	2	4
Trespassing	-	-	5	2	5	12
All others	-	-	2	-	-	2
Total Provincial Statute Violations	1	-	9	9	27	46
Municipal By-Law Violations	-	-	-	1	1	2
GRAND TOTAL	13	63	139	366	747	1328

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada.

TABLE 2

NATURE OF DELINQUENCY BY AGE (12-15) AND OFFENCE, 1980 (ONTARIO)

OFFENCE	AGE 12	13	14	15	Total
Break and enter	425	899	1716	2765	5805
Theft under $200	484	783	1410	1938	4615
Possession	160	330	653	1021	2164
Mischief	147	356	528	649	1680
Theft over $200	56	157	382	693	1288
Assaults	44	100	240	380	764
Take motor vehicle	10	49	156	274	489
Offensive weapons	12	43	87	117	259
Robbery	9	33	63	109	214
Sexual offences	16	24	45	66	151
Automobiles	2	3	32	107	144
Arson	20	26	34	40	120
Murder	-	-	3	2	5
Manslaughter	-	-	2	2	4
All others	92	275	791	1586	2744
Total Criminal Code and Federal Statute Violations	1477	3078	6142	9749	20446
Liquor	27	72	292	806	1197
Traffic	13	80	282	697	1072
Education	42	77	215	210	544
Trespassing	12	25	47	108	192
All others	4	15	46	118	183
Total Provincial Statute Violations	98	269	882	1939	3188
Municipal By-Law Violations	5	5	13	22	45
GRAND TOTAL	1580	3352	7037	11710	23679

SOURCE: Canadian Centre for Justice Statistics Statistics Canada.

TABLE 3

ADJUDICATONS AND DISPOSITIONS BY AGE (7-11), 1980 (ONTARIO)

ADJUDICATIONS/ DISPOSITIONS	AGE 7	8	9	10	11	TOTAL
GRAND TOTAL (from Table 1)	13	63	139	366	747	1328
ADJUDICATIONS						
Adjourn sine die	4	19	34	64	149	270
Other adjudications	5	22	26	74	141	268
Found delinquent	4	22	79	228	457	790
DISPOSITIONS						
Juvenile institution	-	-	-	1	7	8
Referral to province (C.A.S.)	-	2	5	52	60	119
Probation supervision	-	7	26	73	217	323
Fine/restitution	-	1	1	11	17	30
Adjourned indefinitely	4	8	34	57	79	182
Suspended disposition	-	4	11	29	64	108
Reprimanded	-	-	1	4	8	13
Other/not known	-	-	1	1	5	7

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada.

TABLE 4

ADJUDICATIONS AND DISPOSITIONS BY AGE (12-15), 1980 (ONTARIO)

ADJUDICATIONS/ DISPOSITIONS	AGE 12	13	14	15	TOTAL
GRAND TOTAL (from Table 2)	1580	3352	7037	11710	23679
ADJUDICATIONS					
Adjourn sine die	253	414	789	1187	2643
Other adjudications	320	705	1359	2510	4894
Adult Court	-	-	-	20	20
Found delinquent	1007	2233	4889	7993	16122
DISPOSITIONS					
Juvenile institution	28	168	390	976	1562
Referral to province (C.A.S.)	72	121	246	232	671
Probation supervision	474	1091	2477	3531	7573
Fine/restitution	82	171	505	1112	1870
Adjourned indefinitely	181	295	650	983	2109
Suspended disposition	129	303	506	883	1821
Reprimanded	3	15	6	13	37
Other dispositions	38	69	109	263	479

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada.

TABLE 5

DISPOSITIONS BY OFFENCE (7-11, 12-15), 1980 (ONTARIO)

Offence	DISPOSITION								
	Juvenile Institution	Referral to Province	Probation Supervision	Fine/ Restitution	Adjourned Indefinitely	Suspended Disposition	Reprimanded	Other Dispositions	TOTAL
7-11 Years									
Criminal Code/Federal Statute Violations	8	118	313	30	171	106	13	7	766
Provincial Statute Violations	-	1	10	-	10	2	-	-	23
Municipal By-law Violations	-	-	-	-	1	-	-	-	1
TOTAL	8	119	323	30	182	108	13	7	790
12-15 Years									
Criminal Code/Federal Statute Violations	1497	574	6851	1344	1756	1554	29	417	14022
Provincial Statute Violations	65	97	717	520	345	263	8	61	2076
Municipal By-law Violations	-	-	5	6	8	4	-	1	24
TOTAL	1562	671	7573	1870	2109	1821	37	479	16122

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada.

TABLE 6: GROWTH IN NUMBER OF CHARGES, 1977-1980 (ONTARIO), 7-11 YEARS

Offence	1977 No.	1977 Rate per 1000 pop'n	1977 % change in No.	1978 No.	1978 Rate per 1000 pop'n	1978 % change in No.	1979 No.	1979 Rate per 1000 pop'n	1979 % change in No.	1980 No.	1980 Rate per 1000 pop'n	1980 % change in No.
Murder, Attempted Murder, Manslaughter	-			2			-			-		
Sexual Offences	4			6			4			9		
Assaults	30			30			38			34		
Robbery	14			9			14			7		
Arson	29			19			16			31		
Violent Offences Total	77	0.1	-25.2	66	0.1	-14.3	72	0.1	9.1	81	0.1	12.5
Break and Enter	484			421			469			387		
Take Motor Vehicle	14			7			3			6		
Theft Over $200	45			51			26			66		
Theft Under $200	439			378			425			399		
Possession Stolen Goods	181			129			88			129		
Fraud; Other Thefts	50			12			11			3		
Property Offences Total	1213	1.8	-39.9	998	1.5	-17.7	1022	1.5	2.4	990	1.5	-3.2
Mischief	279			197			238			167		
Disorderly Conduct	4			1			1			5		
Offensive Weapons	10			6			6			7		
Other Criminal Code	31			44			24			23		
Other Offences (Criminal Code) Total	324	0.5	-21.9	248	0.4	-23.5	269	0.4	8.5	202	0.3	-24.5
Criminal Code Total	1614	2.4	-26.7	1312	2.0	-18.7	1363	2.1	3.9	1273	1.9	-6.6
Drugs - Federal Statutes	-			1			4			1		
Other Federal Statutes	10			11			11			6		
All Federal Statutes Total	1624	2.4	-26.7	1324	2.0	-18.5	1378	2.1	4.1	1280	2.0	-7.1
Provincial Statutes	67			44			49			46		
Municipal By-Laws	1			1			1			2		
Total (All Offences)	1692	2.5	-25.3	1369	2.0	-19.1	1428	2.2	4.3	1328	2.0	-7.0
Population Estimates (7-11 Years)		682,966			672,307			661,721			655,886	

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada

TABLE 7: GROWTH IN NUMBER OF CHARGES, 1977-1980 (ONTARIO), 12-15 YEARS

Offence	1977 No.	1977 Rate per 1000 pop'n	1977 % change in No.	1978 No.	1978 Rate per 1000 pop'n	1978 % change in No.	1979 No.	1979 Rate per 1000 pop'n	1979 % change in No.	1980 No.	1980 Rate per 1000 pop'n	1980 % change in No.
Murder, Atempted Murder, Manslaughter	7			5			5			9		
Sexual Offences	114			124			160			151		
Assaults	640			725			758			764		
Robbery	122			192			214			214		
Arson	128			100			102			120		
Violent Offences Total	1011	1.6	-12.6	1146	1.8	13.4	1239	2.0	8.1	1258	2.2	1.5
Break and Enter	6014			5776			5538			5805		
Take Motor Vehicle	640			607			595			489		
Theft Over $200	1363			1397			1391			1288		
Theft Under $200	4637			4313			4569			4615		
Possession Stolen Goods	2115			2119			2099			2164		
Fraud; Other Thefts	582			208			174			182		
Property Offences Total	15351	23.5	-9.5	14420	22.6	-6.1	14366	23.5	-0.4	14543	25.0	1.2
Automobiles	132			175			132			144		
Mischief	1738			1417			1636			1680		
Disorderly Conduct	184			189			195			164		
Offensive Weapons	240			238			260			259		
Other Criminal Code	1047			1019			1035			1144		
Other Offences (Criminal Code) Total	3341	5.1	1.2	3038	4.8	-9.1	3258	5.3	7.2	3391	5.8	4.1
Criminal Code Total	19703	30.2	-8.0	18604	29.2	-5.6	18863	30.8	1.4	19192	33.0	1.7
Drugs - Federal Statutes	579			464			555			716		
Other Federal Statutes	540			839			644			538		
All Federal Statutes Total	20822	31.9	-7.0	19907	31.3	-4.4	20062	32.8	0.8	20446	35.2	1.9
Provincial Statutes	3315	5.1	8.5	3111	4.9	-6.2	3230	5.3	3.8	3188	5.5	-1.3
Municipal By-Laws	82			57			39			45		
Unknown	5			1			-			-		
Total (All Offences)	24224	37.1	-5.0	23076	36.2	-4.7	23331	38.1	1.1	23679	40.8	1.5
Population Estimates (12-15 Years)		652,106			637,049			611,823			580,717	

SOURCE: Canadian Centre for Justice Statistics, Statistics Canada

TABLE 8

COURT DECISION BY AGE AND SEX (NUMBER OF JUVENILES), 1980 (ONTARIO)

	AGE													SEX	
COURT DECISION	7	8	9	10	11	Total 7-11	12	13	14	15	Total 12-15	Other*	GRAND TOTAL	Male	Female
Found Delinquent	4	14	52	132	279	481	635	1,337	2,689	4,618	9,279	214	9,974	8,352	1,622
Not found Delinquent	7	21	34	76	151	289	279	474	866	1366	2985	141	3,415	2,591	824
TOTAL	11	35	86	208	430	770	914	1,811	3,555	5,984	12,264	355	13,389	10,943	2,446

* Other - includes adults and unknown ages.

Note: Because of the possibility of overcounting in the process used to compile the data for this table, the figures should be viewed as estimates only.

SOURCE: Justice Statistics Division, Statistics Canada

TABLE 9

POPULATION PROJECTIONS (7-15 YEARS) FOR ONTARIO

YEAR	7 - 11 YEARS		12 - 15 YEARS		TOTAL 7 - 15 YEARS	
	Number	% Change	Number	% Change	Number	% Change
1976	704,440		663,525		1,367,965	
1977	682,966	-3.0	652,106	-1.7	1,335,072	-2.4
1978	672,307	-1.6	637,049	-2.3	1,309,356	-1.9
1979	661,721	-1.6	612,823	-4.0	1,273,544	-2.7
1980	655,886	-0.9	580,717	-5.1	1,236,603	-2.9
1981	646,994	-1.4	553,978	-4.6	1,200,972	-2.9
1982	637,637	-1.4	541,932	-2.2	1,179,569	-1.8
1983	622,982	-2.3	539,275	-0.5	1,162,257	-1.5
1984	616,619	-1.0	537,176	-0.4	1,153,795	-0.7
1985	614,868	-0.3	532,264	-0.9	1,147,132	-0.6
1986	616,978	+0.3	519,017	-2.5	1,135,995	-1.0

SOURCE: Compiled from Ministry of Treasury and Economics Population Projections, based on 1976 Canada Census and modified by Ministry of Treasury and Economics per low fertility rates of 30,000 and internal migration rates of .54.

Statistical Information-Definition of Terms

The following explanations of terms used in the tables are taken from Statistics Canada Publications.

Grand Total - total number of charges disposed of

Adjourned sine die - proceedings adjourned indefinitely with no finding of delinquency

Other adjudications - other decisions not constituting a finding of delinquency

- o no action-termination of the case without a finding of delinquency
- o not guilty because of insanity
- o unfit to stand trial
- o charges withdrawn
- o dismissal
- o other/unknown adjudications

Total found delinquent - total number of charges resulting in a finding of delinquency (either by plea or judicial decision)

Juvenile institution - committal to a provincially approved institution for juveniles (in Ontario, training schools)

Referral to province - committal to the care of a provincially approved organization (in Ontario, children's aid societies)

Probation supervision - court order directing that a juvenile report periodically to a probation officer or other designated person and certain conditions may be attached to this order

Fine/restitution - court order requiring that the juvenile pay a fine of up to $25., or make restitution to an aggrieved person

Adjourned indefinitely - adjournment for an indefinite period of time after a finding of delinquency

Suspended disposition - suspension of the disposition, usually with conditions attached

Reprimanded - official rebuke by the judge

Other/not known - includes the following

- o discharge - either absolutely or on conditions specified in a probation order
- o suspension of driver's license
- o order for psychiatric care
- o probation terminated
- o other and unknown dispositions

Selected Offences with Maximum Adult Sentences

The following is a list of selected offences organized according to maximum punishments for adults:

A. Life Imprisonment:

murder
attempt murder
manslaughter
rape
sexual intercourse with female under 14
robbery
break and enter of a dwelling
mischief endangering life
trafficking in a narcotic

B. Fourteen Years:

break and enter (not a dwelling)
mischief in relation to public property
forgery
arson
causing bodily harm with intent to wound

C. Ten Years:

possession of weapon (for purpose dangerous to public peace or for purpose of committing an offence)
attempt rape
theft of property valued over $200
possession of stolen property valued at over $200

D. Seven Years:

possession of narcotic

E. Five Years:

indecent assault
criminal negligence in operation of motor vehicle
assault causing bodily harm
mischief in relation to private property
pointing a firearm

F. Two Years:

theft of property at under $200
possession of stolen property valued at under $200

G. Six Months:

common assault
taking of motor vehicle without consent

APPENDIX A

Ontario's Proposed Secure Services Act

A policy paper of the Ministry of Community and Social Services (January 1981) outlines the development of a province-wide secure services network for children and adolescents who are either so dangerous or so disturbed that they present a serious threat to themselves or to others. In this new system, existing and planned secure services facilities will be organized around three specific program areas: secure detention, secure care and secure treatment. A basic premise of the proposed network is that a series of referral pathways connecting the different programs will be developed. It is expected that legislation will be introduced shortly.

The proposed Secure Services Act will emphasize that a young person's rights and best interests must always be protected. The Act will provide criteria for admission into secure settings. These will include selecting the least restrictive alternative when considering services for young persons; using formal court processes with full legal representation; and justifying that the potential harm of placing a young person in a secure setting is far outweighed by the risk to society of not doing so.

Secure Detention

The proposed secure detention units will remain essentially the same as the existing secure level of observation and detention. They would continue to contain juveniles who are considered dangerous, and who have been arrested for a serious offence or apprehended after escape from a secure care unit.

Secure Care

Secure care units will be developed from the current training school model. Young persons may be admitted who are between the ages of 12 and 16, who have been convicted of a serious offence and who present a serious threat to others and/or property. The ultimate decision on whether to place a young person in secure care will rest with the courts. Clear guidelines will be provided to the courts and will include:

- the young person is 12 or over and under 16, except with the consent of the Minister;
- has been convicted of a serious offence;

- has a record of conviction for a serious offence within the 12 months preceding the commission of the present offence, except (i) where the circumstances of the present offence indicate that the offender caused, or created the imminent risk of causing, serious bodily harm to another person including sexual assault, or (ii) where the offender has been in secure care within the 12 months preceding; and

- where no less restrictive alternative is feasible.

A Secure Care Review Board will review each disposition after three months, and then every six months until completion of the disposition and will deal with transfers between levels of custody. An offender who is committed to a secure care unit may be transferred to a secure treatment facility after a hearing by the Secure Care Review Board. In such cases, the procedures and criteria for admission to these facilities will be those described for secure treatment.

Secure Treatment

Secure treatment units are designed for young persons with diagnosed mental or emotional disorders who present a serious threat to themselves or others. Some secure treatment units will provide medium and long-term clinical services, while others will meet short-term and emergency needs. The short-term units will offer support to the total service system by providing clinical assessments and accommodation for children in crisis. An important aspect of the service of these units would be consultation and cooperation with referring agencies to ensure that children do not need to be placed in long-term secure settings.

To ensure that a young person will not be unnecessarily confined, the following will be considered by the courts, or by the Secure Care Review Board where there is a transfer from secure care:

- the young person will be 12 or over and under 16, although it may be possible to admit a child under twelve or a young person over 16, in exceptional circumstances;

- has been assessed as having a mental or emotional disorder;

- has caused, or created the imminent risk of causing, serious bodily harm to himself or others, or repeated, continuing and credible threats of such acts, within the 45 days preceding the application for admission;

- has a history of committing other such acts within the 12 months preceding the admission application;

- must require treatment, as established by a clinical assessment, in order to prevent a recurrence of the serious behavior;

- the specific treatment is available at the unit;

- approval for admission has been received from the Director of the unit; and
- no less restrictive form of treatment is feasible.

Based on the admission criteria the procedures for placing a young person in long-term secure treatment will require that the parent or guardian submit an application for admission to family court, that the applicant obtain a clinical assessment of the young person, and that a hearing be held to assess the feasibility of placement.

If the court decides in favour of admission, the initial confinement period will be 90 days. A 90 day extension will be possible after a hearing is held to review the child's progress.

The one exception to the described criteria is the young person who has been found not guilty by reason of insanity. In these situations the Minister's consent would be required for the holding of that person in a secure treatment unit.

APPENDIX B

Sources of Related Documents

1. Copies of the Secure Services Policy Paper are available from:

   Ministry of Community and Social Services
   Information Support Unit
   Hepburn Block, 6th Floor
   Queen's Park, Toronto
   Telephone: (416) 965-3111

   or from the Ministry's Regional Offices.

2. Copies of the information booklet entitled "Highlights of the Young Offenders Act" are available from:

   The Regional Consultation Centre
   Solicitor General of Canada
   2 St. Clair Avenue West, Suite 12A8
   Toronto, Ontario
   M4V 1L5
   Telephone: (416) 966-8107